

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

LUDLOW'S SAND & GRAVEL)
CO., INC.; and G. KEVIN LUDLOW)
Defendants.)
_____)

Civil Action No. _____

CONSENT DECREE

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9606 and 9607, as amended ("CERCLA"), seeking injunctive relief and reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Ludlow Sand & Gravel Superfund Site, Oneida County, New York (the "Site").

B. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint and do not waive any defenses to liability that may exist as of the date of this Consent Decree.

C. The United States has reviewed the Financial Information submitted by Settling Defendants to determine whether Settling Defendants are financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, the United States has determined that Settling Defendants are unable to reimburse the total response costs incurred or to be incurred at the Site but are able to pay valuable consideration in in-kind services as specified in Section VI.

D. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9606, 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, and upon Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. "Borrow Material" shall mean earthen material such as soil encompassing overburden material such as topsoil, sand, silt, clay, gravel, and rocks.
- c. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.
- d. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- e. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.
- f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.
- g. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- h. "Financial Information" shall mean those financial documents identified in Appendix A.
- i. "North Gravel Pit" shall mean the area of the Site so indicated on the diagram included in Appendix B.
- j. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.
- k. "Parties" shall mean the United States and the Settling Defendants.
- l. "Plaintiff" shall mean the United States.
- m. "RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. § 6901, *et seq.*

(also known as the Resource Conservation and Recovery Act).

n. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

o. "Settling Defendants" shall mean the Ludlow 's Sand & Gravel Co., Inc. ("Ludlow S&G") and G. Kevin Ludlow and his heirs.

p. "Site" shall mean the Ludlow Sand & Gravel Superfund Site, approximately 18 acres of which were used for landfilling purposes, located at Holman City Road, Town of Paris, Oneida County, New York, and generally shown on the map and diagram included in Appendix B.

q. "Topsoil" shall mean the surface level of soil, and/or other earthen materials such as sand or clay, to be taken from property at or near the Site and mixed with composted materials so that the mixture of earthen materials and compost are suitable to support vegetation native to Oneida County.

r. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendants to provide valuable consideration to address their liability for the Site as provided in the Covenant Not to Sue by Plaintiff in Section X, and subject to the Reservations of Rights by United States in Section XI.

VI. PROVISION OF IN-KIND SERVICES

5. a. Settling Defendants will provide EPA with *in situ* Borrow Material and Topsoil that is on land owned by Ludlow S&G within or near the Site for use in implementing response activities at the Site. Such response activities include, but are not limited to, EPA's performance of remedial action at the North Gravel Pit area of the Site. The quantity of materials to be supplied to EPA shall not exceed 67,000 cubic yards (truck measure) of Borrow Material (inclusive of materials already provided as discussed in subparagraph b., below) and 2,500 cubic yards (truck measure) of earthen materials to be utilized in making a Topsoil mixture. This material shall be provided by such date as EPA specifies through written notice to Settling Defendants. However, Settling Defendants shall not be required to provide such material prior to 60 days after receiving such notice.

b. Pursuant to, and in accordance with the specifications in, a subcontract with an United States Army Corps of Engineers' contractor (Appendix C), Ludlow S&G has already provided 8,768 cubic yards of Borrow Materials referenced in subparagraph a, above, and

backfilled said materials into the North Gravel Pit to enable EPA to conduct a predesign investigation concerning the area of the North Gravel Pit that would require further remedial action. As part of its consideration for the Covenant Not to Sue by Plaintiff and the Contribution Protection to be provided pursuant to Sections X and XIII of this Consent Decree, Ludlow S&G shall enter into a second subcontract substantially equivalent to the subcontract incorporated as Appendix C herein, with additional specifications as also set forth in Appendix C, for the performance of additional work necessary for the backfilling and capping of the North Gravel Pit. Such work is to encompass the excavation from land owned by it within or near the Site of the Borrow Material (including material to be mixed by Ludlow S&G with other earthen materials and compost to create Topsoil) referenced in subparagraph a, above, the hauling of the Borrow Material and Topsoil (after admixture) to the North Gravel Pit, and the placing, compacting, grading, and seeding with vegetation of such materials at the North Gravel Pit. The satisfactory performance of activities to be conducted pursuant to said subcontract is to be assessed and determined in accordance with the terms and conditions of said subcontract, including the requirements of the Federal Acquisition Regulations referenced therein. Satisfactory performance of said contractual obligations, as determined under that contract, however, is a condition of the Covenant Not to Sue By Plaintiff contained in Section X. below.

VII. FORCE MAJEURE

6.a. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

b. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall notify orally the Chief of the New York Remediation Branch, Emergency and Remedial Response Division, EPA Region II, within 48 hours of when Settling Defendants first knew that the event might cause a delay. Within 5 days thereafter, Settling Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force

majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

c. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendants in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

d. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section VIII (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of subparagraphs a. and b., above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

VIII. DISPUTE RESOLUTION

7.a. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

b. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

c. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding subparagraph, then the position advanced by EPA shall be considered binding

unless, within 10 days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants.

d. Following receipt of Settling Defendants' Statement of Position submitted pursuant to subparagraph (c)(i), the ERRD Director will issue a final decision resolving the dispute. The ERRD Director's decision shall be binding on the Settling Defendants unless, within 10 days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

e. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in subparagraph 8.d. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree and continue to accrue until compliance is attained. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX, Paragraph 8 (Stipulated Penalties).

IX. FAILURE TO COMPLY WITH CONSENT DECREE

8. Stipulated Penalty.

a. If any Borrow Material or Topsoil is not provided by Settling Defendants in the quantities set forth or by the date required by Paragraph 5 above or in accordance with the specifications set forth in the subcontract (Appendix C), or if Settling Defendants do not perform the work in accordance with the requirements set forth in the subcontract (Appendix C), Settling Defendants shall be in violation of this Consent Decree and shall pay, as a stipulated penalty \$1,000 per violation per day that provision of such materials is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA unless Settling Defendants invoke the Dispute Resolution procedures under Section VIII (Dispute Resolution). All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number 02-74, and DOJ Case Number 90-11-3-08084/1, and shall be sent to:

EPA Region II
Attn: Superfund Accounting
P.O. Box 360188M
Pittsburgh, Pennsylvania 15251

c. At the time of each payment, Settling Defendant shall send notice that payment has been made to EPA and DOJ in accordance with Section XVI (Notices and Submissions) and to:

United States Environmental Protection Agency
26 W. Martin Luther King Drive
Attention: FINANCE
MS: NWD
Cincinnati, Ohio 45268

or E-mail to the following address: AcctsReceivable.CINWD@epa.gov

d. Penalties shall continue to accrue as provided in Paragraph 8.a. during any dispute resolution period, but need not be paid until the following:

(i) If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the date of EPA's decision or order;

(ii) If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph (iii) below;

(iii) If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendants to the extent that they prevail.

e. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after performance is due or the day a violation occurs, and shall continue to accrue through the final day of completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

9. If the United States brings an action to enforce this Consent Decree, Settling Defendant

shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

10. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

11. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from performance of in-kind services as required by Section VI or from performance of any other requirements of this Consent Decree.

X. COVENANT NOT TO SUE BY PLAINTIFF

12. Except as specifically provided in Section XI (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present liability, this covenant shall take effect upon receipt by EPA of the in-kind services required by Section VI (Provision of In-kind Services) and any amount due under Section IX (Failure to Comply with Consent Decree). With respect to future liability, this covenant shall take effect upon EPA's certification, after Settling Defendants have completed the in-kind services required by Section VI, that remedial action has been completed at the Site. This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree including but not limited to, the provision of in-kind services and the satisfactory performance of contractual obligations pursuant to Section VI (Provision of In-kind Services), and the payment of any amount due under Section IX (Failure to Comply with Consent Decree). This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Defendant. If the Financial Information is subsequently determined by EPA to be, in any material respect, false or inaccurate, Settling Defendant shall forfeit all materials provided pursuant to this Consent Decree and this covenant not to sue and the contribution protection in Paragraph 19 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Settling Defendants' false or materially inaccurate information. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

XI. RESERVATION OF RIGHTS BY UNITED STATES

13. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraph 12. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendants to meet a requirement of this Consent

Decree;

- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability for future disposal of a hazardous substance, pollutant, or contaminant at the Site; and
- e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

14. Notwithstanding any other provision of this Consent Decree, EPA reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information provided by Settling Defendant, or the financial certification made by Settling Defendants in Paragraph 25, is, in any material respect, false or inaccurate.

XII. COVENANT NOT TO SUE BY SETTLING DEFENDANT

15. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 17 (Waiver of Claims) and Paragraph 21 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 13 (c) - (e), but only to the extent that Settling Defendants' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

16. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or

40 C.F.R. 300.700(d).

17. Settling Defendants agree not to assert any CERCLA claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendants may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendants.

XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

18. Except as provided in Paragraph 17, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 17, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

19. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person. The "matters addressed" in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendants coming within the scope of such reservations.

20. Settling Defendants agree that, with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendants also agree that, with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree, they will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon them. In addition, Settling Defendants shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

21. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing

in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section X.

XIV. ACCESS AND INSTITUTIONAL CONTROLS

22. If the Site, or any other property in very close proximity to where hazardous substances have come to be located and where access and/or land/water use restrictions are needed to implement response activities at the Site, is owned or controlled by Settling Defendants, Settling Defendants shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States and its representatives, including EPA and its contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any response activity related to the Site, including, but not limited to, the following activities:

1. Monitoring, investigation, removal, remedial or other activities at the Site;
 2. Verifying any data or information submitted to the United States;
 3. Conducting investigations relating to contamination at or near the Site;
 4. Obtaining samples;
 5. Assessing the need for, planning, or implementing additional response actions at or near the Site;
 6. Assessing Settling Defendant's compliance with this Consent Decree;
- and
7. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, except as otherwise approved in writing by EPA and the New York State Department of Environmental Conservation, for residential purposes or in any manner that would interfere with or adversely affect the implementation, integrity or protectiveness of the remedial measures performed, or to be performed at the Site, including, but not limited to, the extraction of groundwater on-site, any digging, excavation, extraction of materials, construction or other activity that would disturb the caps placed upon the closed landfill (Operable Unit 1) and the North Gravel Pit (Operable Unit 2), as those Operable Units are indicated on the Site diagram included in Appendix B; and

c. execute and record in the appropriate land records office of Oneida County, State of New York, an easement, running with the land, that (i) grants a right of access for the

purpose of conducting response activities at the Site, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 22(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures performed, or to be performed, at the Site. Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) and/or other appropriate grantees. Settling Defendants shall, within 45 days of entry of this Consent Decree, submit to EPA for review and approval with respect to such property:

1. a draft easement that is enforceable under the laws of the State of New York, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

2. current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

Within 15 days of EPA's approval and acceptance of the easement, Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the easement with the appropriate land records office of Oneida County. Within 30 days of recording the easement, Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

23. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement response activities at the Site, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendants shall cooperate with EPA's efforts to secure such governmental controls.

24. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XV. CERTIFICATION

25. Settling Defendants hereby certify that, to the best of their knowledge and belief, after thorough inquiry, they have:

- a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or other information relating to their potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it

regarding the Site, and that they have fully complied with any and all EPA requests for information regarding the Site and Settling Defendants' financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927; and

b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth their financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Defendants execute this Consent Decree.

XVI. NOTICES AND SUBMISSIONS

26. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendants, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-08084/1)
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

U.S. Environmental Protection Agency, Region II
Office of Regional Counsel
New York/Caribbean Superfund Branch
290 Broadway, 17th Floor
New York, New York 10007-1866
Attn: Ludlow Sand & Gravel Superfund Site Attorney

As to Settling Defendants:

Kevin M. Young, Esq.
Young, Sommer ...LLC
5 Palisades Drive
Albany, NY 12205

G. Kevin Ludlow
P.O. Box 452
Sauquoit, NY 13456-0452

XVII. RETENTION OF JURISDICTION

27. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVIII. INTEGRATION/APPENDICES

28. This Consent Decree and its appendices constitute the final, complete and exclusive Consent Decree and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is a list of the financial documents submitted to EPA by Settling Defendant;” and

“Appendix B” contains a map of the Site and a diagram showing the general location of the operable units at the Site.

“Appendix C” contains a copy of the contract entered between EPA’s contractor and Defendant Ludlow’s Sand and Gravel Company, Inc.

XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

29. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

30. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

XX. SIGNATORIES/SERVICE

31. Each undersigned representative of Settling Defendants to this Consent Decree and the Deputy Chief, Environmental Enforcement Section of the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such

Party to this document.

32. Settling Defendants hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

33. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on his/its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXI. FINAL JUDGMENT

34. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 2007.

United States District Judge

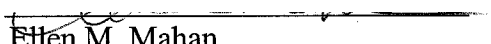
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of the United States of America v. Ludlow's Sand & Gravel Co., Inc. et al. (Civ. Action No.), relating to the Ludlow Sand & Gravel Superfund Site.

FOR THE UNITED STATES OF AMERICA

Glenn T. Suddaby
United States Attorney
Northern District of New York
United States District Court
P.O. Box 7198
100 S. Clinton Street
Syracuse, NY 13261-7198


William H. Pease
Assistant United States Attorney
Northern District of New York

Date:



Ellen M. Mahan
Deputy Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Room 2143
Washington, DC 20530

Date:

7/20/7


David L. Gordon
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Bar Roll #: 105909

Date: 6/24/07

 George Pavlou, Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region II
290 Broadway
New York, New York 10007-1866

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of the United States of America v. Ludlow's Sand & Gravel Co., Inc. et al. (Civ. Action No. _____), relating to the Ludlow Sand & Gravel Superfund Site.

FOR DEFENDANT LUDLOW'S SAND & GRAVEL CO., INC.

Date: 6-24-07 By: [Signature]
[Names and addresses of Defendant's signatory]
STEVEN P. LUDLOW, PRESIDENT

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: _____

Title: _____

Address: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of the United States of America v. Ludlow's Sand & Gravel Co., Inc. et al. (Civ. Action No. _____), relating to the Ludlow Sand & Gravel Superfund Site.

FOR DEFENDANT G. KEVIN LUDLOW

Date: 6-24-07
G. KEVIN LUDLOW

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: _____

Title: _____

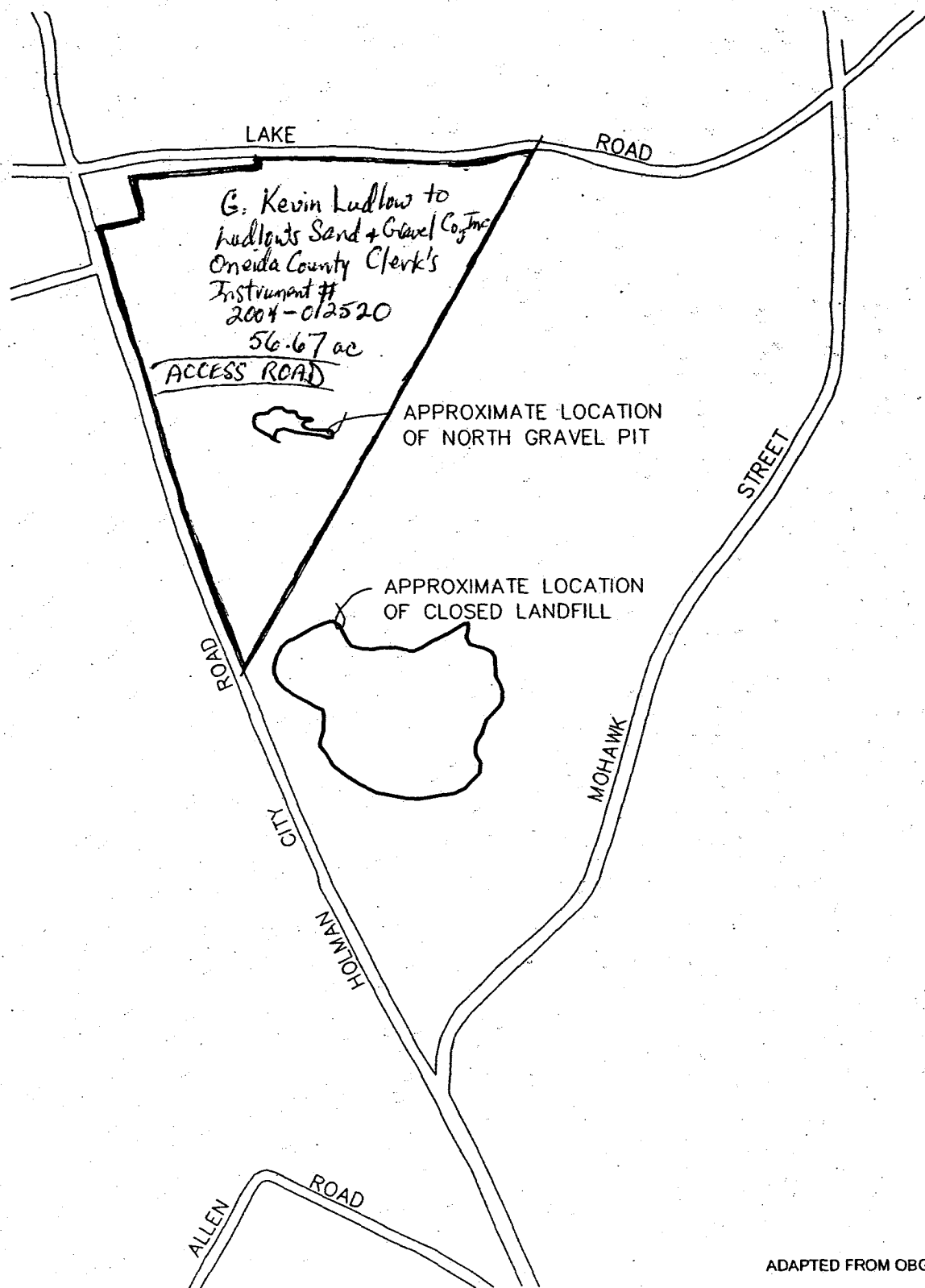
Address: _____

APPENDIX A

FINANCIAL DOCUMENTS SUBMITTED TO EPA BY SETTLING DEFENDANTS

1. Letter dated August 9, 2004, with attachments, from Young, Sommer ... LLC, Attorneys for Defendants, G. Kevin Ludlow and Ludlow's Sand and Gravel Company, Inc., to United States Environmental Protection Agency.
2. Letter dated November 11, 2004, with attachments, from Young, Sommer ... LLC, Attorneys for Defendants, G. Kevin Ludlow and Ludlow's Sand and Gravel Company, Inc., to United States Environmental Protection Agency.
3. Letter dated July 12, 2005, with attachments, from Young, Sommer ... LLC, Attorneys for Defendants, G. Kevin Ludlow and Ludlow's Sand and Gravel Company, Inc., to United States Environmental Protection Agency.

APPENDIX B – SITE MAP



ADAPTED FROM OBG RI/FS, 1999

CDM

Ludlow Sand and Gravel Superfund Site

Town of Paris, New York

**APPENDIX C – CONTRACT BETWEEN LUDLOW SAND AND GRAVEL COMPANY,
INC. AND C.D.M. FEDERAL PROGRAMS CORPORATION (Subcontractor to U.S.
Army Corps of Engineers)**

Specifications for contract for second phase of backfilling operations for the Ludlow Sand & Gravel Superfund Site

Subcontractor will provide equipment and labor to grade haul road and ramp for all truck access; excavate, load, haul, place and grade up to 58,232 cubic yards of fill material at the rate of \$4.25 per yard, trucked quantity; and will further provide up to 2,500 cubic yards of topsoil, trucked quantity, which will be placed, graded and seeded with vegetation for \$14.25 per yard.

Subcontract No: 6142 91-003-SI
Pursuant to Contract No: DACW-41-02-D-0002
Subcontract Effective Date: Upon signature of both parties

PART I: SCHEDULE

Subcontract pursuant to the U.S. Army Corps of Engineers (USACE), Contract No: DACW-41-02-D-0002 (the Prime Contract) effective November 30, 2001.

ISSUED BY: **CDM FEDERAL PROGRAMS CORPORATION**
1331 17th Street, Suite 1100
Denver, CO 80202
Tele: (303) 295-1237 Fax: (303) 295-1895

SUBCONTRACTOR: **Ludlow Sand & Gravel**
3079 Oneida St.
Sauquoit, NY 13456

TITLE OF SUBCONTRACT: Backfilling Services at the Ludlow Sand and Gravel Superfund Site located in the Town of Paris, Oneida County, New York

TYPE OF SUBCONTRACT: Indefinite Quantity (Fixed Unit Price)

CEILING PRICE: \$29,750.00

PERIOD OF PERFORMANCE: Upon Signature by both parties thru January 31, 2006

CDM Federal Program Manager: Darwin Nelson
CDM Federal Contract Officer: Vernon L. Wimberley

AGREEMENT

Dimitrios Kleides

SUBCONTRACTOR agrees to furnish and deliver all items or perform all the services set forth above or on any continuation sheets for the consideration as stated herein. The rights and obligations of the parties of this Subcontract shall be subject to and governed by the following documents: (a) Schedule (Part I), (b) Representations and Certifications, (c) Subcontract Clauses (Part II), (d) drawings and other Attachments, Appendices that are incorporated by reference, (e) Supplemental Conditions and (f) Statement of Work.

This Subcontract supersedes all prior oral and written agreements, if any, between the parties, and constitutes the entire agreement between the parties with respect to the work to be performed under this Subcontract.

CDM FEDERAL PROGRAMS CORPORATION

LUDLOW SAND & GRAVEL

CONTRACT OFFICER:

Vernon L. Wimberley

(NAME)

Principal Procurement Manager

(TITLE)

BY:

(SIGNATURE)

DATE:

12/20/05

STEVEN P. LUDLOW

(NAME)

PRESIDENT LSG

(TITLE)

BY:

SP LUDLOW

(SIGNATURE)

DATE:

DEC 14, 2005

Subcontract No: 6142-191-003-SI
Pursuant to Contract No: DACW-41-02-D-0002
Subcontract Effective Date: Upon signature of both parties

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Subcontract No: 6142-191-003-SI
Pursuant to Contract No: DACW-41-02-D-0002
Subcontract Effective Date: Upon signature of both parties

SECTION A SUBCONTRACT INFORMATION

A.1 DEFINITIONS

As used throughout this Subcontract, the following terms shall have the meanings set forth below:

- (a) *CDM Federal* - CDM FEDERAL PROGRAMS CORPORATION, a prime contractor of United States Army Corps of Engineers (USACE), Kansas City District effective November 30, 2001.
- (b) *Subcontractor* - shall mean the entity on the face of this document.
- (c) *Government* - When used in a contractual capacity with respect to the prime contract shall mean USACE (Agency); otherwise it retains its original meaning as the U.S. Federal Government.
- (d) *Prime Contract* - As used in this Subcontract shall mean a contract between an Agency of the United States Government and the first tier contractor for which this Subcontract is a lower-tier subcontract.
- (e) *Prime Contractor* - As used in this Subcontract shall mean an entity that contracts directly with an Agency of the United States Government to supply goods or services.
- (f) *Subcontract* - As used herein shall mean this Subcontract No. 6142-191-003-SI
- (g) *Program Manager and Project Manager* - CDM Federal employees who are responsible for the technical management of this Subcontract.
- (h) *Contract Officer* - As used in this Subcontract shall mean the CDM Federal Contract Officer, unless specifically stated otherwise.

Other definitions relating to terms in clauses incorporated by reference are contained in Section I.

A.2 NOTICES TO SUBCONTRACTOR AND CDM FEDERAL REPRESENTATIVES

- (a) Subcontractor Administration Representatives:
Subcontractor:

Name: Steve Ludlow
Address: Ludlow Sand & Gravel
33079 Oneida St.
Sauquoit, NY 13456
Telephone: (315) 534-2334

CDM Federal Subcontract Administrator:

Name: Jeanne Reedy
Address: CDM Federal Programs Corporation
1331 17th Street, Suite 1100
Denver, CO 80202
Telephone: (303) 295-1237

- (b) Technical Representatives:

Subcontractor/Project Manager:
Name: Steve Ludlow
Address: Ludlow Sand & Gravel
33079 Oneida St.
Sauquoit, NY 13456
Telephone: (315) 534-2334

CDM Federal Project Manager:
Name: Thomas Mathew
Address: CDM Federal Programs Corporation
Raritan Plaza 1, Raritan Center
Edison, NJ 08818
Telephone: (732) 225-7000

Subcontract No: 6142-191-003-SI
Pursuant to Contract No: DACW-41-02-D-0002
Subcontract Effective Date: Upon signature of both parties

All notices, orders, directives, requests or other written communications ("Notice") required or permitted under this Subcontract shall be in writing and either delivered personally or sent by facsimile, overnight delivery, express mail, or certified or registered mail, postage prepaid, return receipt requested. All Notices shall be deemed issued if delivered or sent to the appropriate representatives and addressed as indicated above.

A notice shall be addressed, in the case of the Subcontractor, to the appropriate CDM Federal representative noted above. In the case of CDM Federal, notices to the Subcontractor will be sent to the appropriate Subcontractor representative noted above. Either party may designate, by Notice to the other, substitute representatives, addresses or facsimile numbers for Notices, and thereafter, Notices are to be directed to those substitute representatives, addresses, or facsimile numbers.

SECTION B SUPPLIES OR SERVICES AND PRICE/COSTS

B.1 SUBCONTRACTOR DUTIES, RESPONSIBILITIES AND OBLIGATIONS

- (a) The Subcontractor's duties, responsibilities and obligations hereunder are to diligently perform all required work within the Statement of Work of Section C, DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK, and otherwise comply with all other terms and conditions of this Subcontract.
- (b) Notwithstanding the right of CDM Federal to review Subcontractor's effort and progress, it is expressly understood that Subcontractor is completely responsible for compliance with the provisions of this Subcontract, and any reviews or approvals given by CDM Federal do not relieve Subcontractor of this responsibility. No information or advice given by CDM Federal shall be deemed to authorize Subcontractor to change any of the provisions or requirements of this Subcontract, unless such information or advice is incorporated in a written amendment to this Subcontract.

B.2 SUBCONTRACT CEILING

The ceiling price for services provided under Section B, and itemized in Attachment B, Payment Schedule, is indicated on the face of this document. Final unit quantities will be determined by the actual quantities provided. Unit prices and estimated quantities are listed in Attachment B, Payment Schedule.

B.3 TASK ORDER/WORK RELEASE ASSIGNMENT METHOD Applicable X Not Applicable

- (a) All work to be performed hereunder shall be in accordance with task orders issued by CDM Federal. Each task order shall be subject to all of the terms and conditions of this Blanket Order Subcontract plus such additional terms and conditions as may be incorporated therein.
- (b) As the need for a task order develops, CDM Federal will negotiate the Statement of Work and any unit prices not identified in Attachment B, as required, and subsequently issue a task order, which will contain a definitized Statement of Work.
- (c) The Subcontractor shall perform all work and provide all required reports for the unit prices established in Attachment B and within the price specified in the task order. Task orders may be issued on an [] INDEFINITE QUANTITY (fixed unit price), [] FIRM FIXED PRICE (lump sum), [] TIME AND MATERIALS, or [] COST-REIMBURSEMENT basis. In the instance of an indefinite quantity task order, the Subcontractor may invoice CDM Federal on the basis of quantities expended by Subcontractor and approved by CDM Federal. In the instance of a firm-fixed price task order, the Subcontractor may invoice CDM Federal on the basis of the percentage of work completed by Subcontractor and accepted by CDM Federal. The percentage will be defined by project milestones specifically identified in the task order. This is not an expressed or implied warranty that CDM Federal will authorize the incurrence of any charges under this Blanket Order Subcontract.

Subcontract No: 6142-191-003-SI
Pursuant to Contract No: DACW-41-02-D-0002
Subcontract Effective Date: Upon signature of both parties

(d) A task order will include the following:

1. Date of task order
2. Task Order number
3. Subcontract number
4. A site specific Statement of Work (including reports to be submitted to CDM Federal) to be performed and location of the work.
5. The period of performance of the work.
6. The price for performance of the work.
7. Identification of key personnel.
8. Appropriate contractual provisions in addition to those mentioned above.
9. Notification as to whether or not Client approval is required.
10. Signature of an authorized representative of CDM Federal.
11. Wage Determinations as applicable

(e) No work shall be performed until a written task order has been received by the Subcontractor. Further, if the task order indicates that approval is required (see (d)9 above), no work shall be performed until notice of such approval has been received. Once the task order has been fully executed by both parties, the task order becomes a binding subcontract.

SECTION C DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK

C.1 STATEMENT OF WORK

The Subcontractor shall furnish the necessary personnel, material, equipment, services, facilities (except as otherwise specified) and transportation to perform the tasks described in the Statement of Work included in Attachment A, attached hereto and hereby incorporated into this Subcontract.

SECTION D PACKAGING AND MARKING

(THERE ARE NO CLAUSES IN THIS SECTION)

SECTION E INSPECTION AND ACCEPTANCE

E.1 INSPECTION AND ACCEPTANCE

- (a) The right to inspect work performed hereunder as specified in FAR clause [☒] 52.246-4 entitled **INSPECTION OF SERVICES – FIXED PRICE**, [☐] 52.246-6 entitled **INSPECTION – TIME AND MATERIALS LABOR HOUR**, or [☐] 52.246-5 entitled **INSPECTION OF SERVICES – COST REIMBURSEMENT** is hereby incorporated by referenced in accordance with Section I of this Subcontract, shall extend to both CDM Federal and the Government. CDM Federal or its duly authorized representative will perform inspection and acceptance of materials and services to be provided. Inspections shall be conducted in a manner so as to not unduly delay work.
- (b) For purposes of this clause, CDM Federal's Program Manager and Project Manager are authorized as representatives of CDM Federal.
- (c) Acceptance of work hereunder shall be made by the CDM Federal but shall not be considered final until after acceptance of work incorporating Subcontractor's efforts hereunder has been made by the Government.

Subcontract No: 6142-191-003-SI
Pursuant to Contract No: DACW-41-02-D-0002
Subcontract Effective Date: Upon signature of both parties

SECTION F DELIVERIES OR PERFORMANCE

F.1 PERIOD OF PERFORMANCE

- (a) The period of performance of this Subcontract is from the effective date of the Subcontract through the date indicated on the face of this document.
- (b) Under no circumstances will the Subcontractor start work prior to the effective date of the Subcontract unless specifically authorized to do so by the CDM Federal Contract Officer. Any work commenced prior to the effective date of the Subcontract or the date authorized by the CDM Federal Contract Officer will be considered unauthorized work.

F.2 EXERCISE OF OPTIONS TO EXTEND THE TERM OF THE SUBCONTRACT

 APPLICABLE X **NOT APPLICABLE**

- (a) CDM Federal reserves the right to exercise its option to extend the agreement for the time periods specified on the face of this document.
- (b) CDM Federal may extend the terms of this agreement by written notice to the Subcontractor; provided, CDM Federal shall give the Subcontractor preliminary written notice to extend 15 days before the agreement expires. The preliminary notice does not commit CDM Federal to an extension.
- (c) If CDM Federal exercises these options, the extended agreement shall be considered to include this option provision.

F.3 PLACE OF PERFORMANCE

The locations of work to be performed shall be specified in Attachment A, Statement of Work or in individual Task Orders, as applicable.

F.4 ORDERING

- (a) Delivery or performance shall be made only as authorized by orders issued by CDM Federal or others authorized in writing by CDM Federal. Orders may be issued in writing or orally. Oral delivery order will be confirmed in writing. If mailed, an order is considered 'issued' when it is postmarked.
- (b) All delivery orders are subject to the terms and conditions of this Subcontract. In the event of any conflict between an order and this Subcontract, the Subcontract shall control.
- (c) All orders issued will call for completion within the Subcontract period specified herein. However, any order issued but not completed during that period, shall be completed by the Subcontractor unless terminated in accordance with the provisions relating to Termination for Convenience or Default contained elsewhere herein or by mutual consent of the parties.

F.5 REPORTS OF WORK

The Subcontractor shall prepare and deliver reports in accordance with Attachment A, Statement of Work or individual Task Order, as applicable.

Subcontract No: 6142-191-003-SI
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F.6 WORKING FILES

The Subcontractor shall maintain accurate working files on all work documentation including calculations, assumptions, interpretations of regulations, sources of information, and other raw data required in the performance of this Subcontract. The Subcontractor shall provide the information contained in its working files upon request of the CDM Federal Contract Officer or Program Manager.

F.7 MARKETING (Include in team subcontracts) Applicable X Not Applicable

The Subcontractor shall coordinate its marketing activities with the CDM Federal Program Manager prior to meeting with the Government. CDM Federal will provide assistance to the Subcontractor in arranging meetings and presentations, to the extent possible, at the request of the Subcontractor. If circumstances do not allow the Subcontractor to notify the CDM Federal Program Manager before meeting with the Government, then the Subcontractor shall notify CDM Federal, in writing, within 5 business days after the meeting.

F.8 ORDER LIMITATIONS

- (a) Minimum Order: The dollar value of the minimum quantity CDM Federal will be obligated to purchase under this Subcontract is \$100.00, provided the Subcontractor performs services equal to that value.
- (b) Maximum Order: The dollar value of the maximum quantity CDM Federal will be entitled to purchase under this Subcontract is \$29,750.00.

F.9 INDEFINITE QUANTITY X Applicable Not Applicable

- (a) This is an indefinite quantity type Subcontract for the supplies or services specified, and effective for the period stated elsewhere in this Subcontract. The quantities stated in Attachment B, Payment Schedule, are estimates only and are not purchased by this Subcontract.
- (b) Subcontractor shall furnish to CDM Federal, when and if ordered, the supplies or services specified elsewhere up to and including the quantities designated in Attachment B, Payment Schedule or individual Task Orders, as applicable. CDM Federal shall order at least the quantity of supplies or services designated as the 'minimum', in Section F, Delivery Order Limitations.
- (c) Except for any limitations on quantities in the Delivery Order Limitations clause or in Attachment B, Payment Schedule, there is no limit to the number of orders which may be issued, provided that in aggregate the total value of these orders, when added together, shall not exceed the ceiling specified in Section B, Ceiling Price.
- (d) The quantities shown in Attachment B, Payment Schedule, represent a current estimate of needs during the Subcontract period. CDM Federal does not warrant the accuracy of that estimate.

SECTION G SUBCONTRACT ADMINISTRATION DATA

G.1 CDM FEDERAL CONTRACT OFFICER

Notwithstanding any of the provisions of this Subcontract, the CDM Federal Contract Officer shall be the only individual authorized to redirect effort or in any way amend or modify any of the terms of this Subcontract. All contacts and commitments between the parties regarding prices, terms, quantities, deliveries, and financial adjustments shall be made only between the CDM Federal Contract Officer and Subcontractor's Contract Representative. Any action by the Subcontractor, which by its nature effects a change to this Subcontract, or any verbal or written request, notice, authorization, direction or order received by the Subcontractor shall not be binding upon CDM Federal, or serve as a basis for a change in the Subcontract cost, fee or any other provision of

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this Subcontract, unless issued (or confirmed) in writing by the CDM Federal Contract Officer.

G.2 PAYMENTS

Payments shall be made in accordance with the FAR "Payments" clause in Section I of this Subcontract for work which is completed and accepted in accordance with Article E.1 INSPECTION AND ACCEPTANCE.

- (a) In making such payments, there shall be retained a maximum of ten (10%) percent of the invoiced amount until final completion and acceptance of the Subcontract work. CDM Federal will evaluate the need to continue retaining ten percent (10%) of each additional invoice when the cumulative retainage has reached \$20,000 and at each \$10,000 increment of retainage thereafter. Whenever the work is substantially complete CDM Federal shall retain a portion of the previously retained amount it considers adequate for protection of CDM Federal and at their discretion, may release to the Subcontractor all or a portion of any excess amount.
- (b) Upon final and complete acceptance of the work incorporating Subcontractor's efforts hereunder by the Prime Contractor, any retained amount will be released to the Subcontractor.

G.3 SUBMISSION OF INVOICES

- (a) An invoice is a written request for payment under the Subcontract for services rendered. In order to be deemed proper, all invoices shall indicate, at a minimum, the following:
 - (1) Invoice date
 - (2) Subcontractor name and payment address
 - (3) Subcontract number, Delivery or Task Order number (if appropriate), **item number and description**, quantities delivered, unit rates as incorporated into this Subcontract, and total. Copies of delivery tickets or other such items as may be reasonably required by CDM Federal to support quantities of items delivered shall be submitted with each invoice.
- (b) Invoices will be submitted in triplicate (original and two (2) copies) to the address shown on the face of this document, **Attention Subcontracts Manager**.

G.4 ASSIGNMENT OF SUBCONTRACT

Subcontractor shall not assign, sublet or transfer any rights under or interest in this Subcontract (including, but without limitation, moneys that may become due or moneys that are due) without the prior written consent of CDM Federal except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law.

G.5 CONSENT FOR LOWER TIER SUBCONTRACTORS AND CONSULTANTS

- (a) The services of all lower tier subcontractors anticipated to be utilized in this Subcontract are subject to the prior written consent of the CDM Federal Contract Officer.
- (b) The services of a consultant or consultants anticipated to be utilized in this Subcontract are subject to the consent of the CDM Federal Contract Officer which is contingent upon Government Contracting Officer consent, prior to such utilization. The Subcontractor agrees to determine whether any consultant anticipated to be used in this Subcontract, and not already consented to by the CDM Federal Contract Officer, has in effect, an agreement with any agency of the Federal government for similar or like services, and, if so, to notify the CDM Federal Contract Officer.

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G.6 DECONTAMINATION OF GOVERNMENT PROPERTY

In addition to the requirements of the FAR clause entitled "Government Property" in Section I of this Subcontract, the Subcontractor shall certify in writing that any Government-furnished or CDM Federal-furnished property provided by CDM Federal is returned to CDM Federal free from contamination by any hazardous or toxic substances.

G.7 WAIVER

The failure of either party to insist on performance of any provision of this Subcontract shall not be construed as a waiver of that provision in any later instance.

G.8 CHOICE OF LAW

Irrespective of the place of performance, this Subcontract shall be construed and interpreted according to the Federal common law of government contracts as enunciated and applied by Federal judicial bodies, board of contract appeals, and quasi-judicial agencies of the Federal government. To the extent that the Federal common law of government contracts is not dispositive, the laws of the Commonwealth of Massachusetts shall apply.

G.9 PRIVACY OF CONTRACT

- (a) The contractual relationship for this Subcontract is between CDM Federal and Subcontractor. There is no privity of contract between Subcontractor and the Government.
- (b) All communications between Subcontractor and Government must be approved in advance by CDM Federal's Contract Officer. In no event shall Subcontractor provide cost estimates or work products directly to the Government or any other third party.
- (c) Under no circumstances shall Subcontractor act upon directions given by a representative of the Government without the specific written confirmation by the CDM Federal Contract Officer. All such direction and technical liaison shall take place through CDM Federal. CDM Federal will not be liable for costs of work performed by Subcontractor outside of these terms. If Subcontractor receives such direction from any representative of the Government, Subcontractor shall notify the CDM Federal Contract Officer as soon as possible before taking any action based upon such direction.

G.10 INDEPENDENT CONTRACTOR

The Subcontractor acknowledges that it is an independent, professional contractor. This Subcontract shall not be construed to authorize the Subcontractor, or any of its employees or agents, to act as the employee or agent of CDM Federal for any purpose, including but not limited to Federal, State, or local unemployment insurance law, old age benefits, or Social Security Law, Workman's Compensation Law, or under Internal Revenue legislation, or any industrial law. This Subcontract shall not create a joint venture or other formal business organization of any kind between the Subcontractor and CDM Federal.

G.11 DISPUTES

- (a) The parties to this Subcontract acknowledge and understand that the Prime Contract includes the current version of the "Disputes" Clause as set forth in FAR 52.233-1 (the "Clause"), and further the Prime Contract is subject to the Contract Disputes ACT of 1978 (41 U.S.C. Section 601-613) (the "Act").
- (b) Both parties acknowledge and understand that all disputes arising under or relating to the Prime Contract involving a "Subcontract claim," as hereinafter defined, shall be resolved under the Clause and the Act except where they provide no remedy.

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- (c) "Subcontractor claim" as used in the Clause, means a written demand or written assertion by one of the subcontracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of Subcontract terms, or other relief arising under or derived from the Prime Contract as a result of Government action or omission such that it would constitute a "claim" under the Clause thereunder. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a "Subcontractor claim" hereunder. The submission may be converted to a "Subcontractor claim" hereunder if it is disputed either as to liability or amount, or is not acted upon in a reasonable time, by complying with the submission and certification requirements, to the extent applicable, of the Clause.
- (d) Only if paragraphs (b) and (c) above provide no remedy, or if a Subcontractor, without good cause, refuses to submit a claim for resolution under the Clause, disputes between the parties hereto shall be determined in accordance with other applicable law or contractual provisions contained in this Subcontract without regard to, and independent of, any claims or disputes or entitlement thereunder arising under the Clause or the Act. Failure of Subcontractor to furnish adequate and timely support for said claim or failure to certify said claim when required shall constitute good cause for refusal to submit said claim to the Government. Venue for claims covered by this paragraph (d) shall be the State or Federal Courts located in the Commonwealth of Massachusetts.
- (e) (1) A Subcontractor claim, as herein above defined, shall be made in writing and submitted to CDM Federal. CDM Federal may forward such claim, if in its discretionary opinion, the claim is well founded in fact and has been adequately supported by proper documentation, separately or in combination with its claims and those of other subcontractors, to the Government Contracting Officer for final decision. In the event of a claim by the Government against CDM Federal, which CDM Federal contends should involve adjustments of this Subcontract, CDM Federal shall promptly give written notice to the Subcontractor of any such claims by the Government.
- (2) CDM Federal may submit to the Government any Subcontractor claim, as herein above defined, in such form and subject to the requirements of the Clause and the Act. CDM Federal shall certify such claim submittal to the extent required and in the form and manner required by the Clause and the Act. To the extent that the Subcontractor claim itself exceeds \$100,000, or to the extent that the Subcontractor claim in combination with such other interrelated claims by other subcontractors or CDM Federal to the Government exceed \$100,000 and CDM Federal so requests in writing, the Subcontractor shall submit with its claim a certification that:
- (i) The claim is made in good faith;
 - (ii) The supporting data are accurate and complete to the best of the Subcontractor's knowledge and belief; and
 - (iii) The amount accurately reflects the Subcontract adjustments for which the Subcontractor believes the Government is liable.
- (3) In the event that CDM Federal is required to certify any claim to the Government under the Clause and the Act, which includes as a component thereof any Subcontractor claim, as defined above, the Subcontractor shall provide such information, substantiation and assurances as reasonably required by CDM Federal including, but not limited to, adequate cost and pricing data, in order to support such certification by CDM Federal of the entire claim including the Subcontractor's portion thereof. CDM Federal reserves the right to refuse to submit a Subcontractor claim it considers unsubstantiated or improperly certified by the Subcontractor.
- (i) If the Subcontractor is an individual, the certification shall be executed by that individual.

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- (ii) If the Subcontractor is not an individual, the certification shall be executed by:
 - A. A senior company official in charge at the Subcontractor's Plant or locations involved;
or
 - B. An officer or general partner of the Subcontractor having overall responsibility for the conduct of the Subcontractor's affairs.
- (f) Pending resolution of any such dispute by settlement or by final judgment, the parties shall proceed diligently with performance. Subcontractor's performance shall be in accordance with CDM Federal's written instructions.
- (g) Subcontractor shall not be entitled to receive any greater amount from CDM Federal than CDM Federal is entitled to and actually does receive from the Government on account of Subcontractor claim less any markups or costs incurred by CDM Federal and to which CDM Federal is otherwise entitled, and Subcontractor agrees that it will accept such amount, if any, received by CDM Federal from the Government as full satisfaction and discharge of the Subcontract claim.

G.12 CHANGE IN OWNERSHIP OR FINANCIAL CONDITION

- (a) If the Subcontractor experiences a material change in its ownership or financial condition at any time after the effective date of this Subcontract, the Subcontractor shall notify CDM Federal in writing within 30 days after the change occurs or is identified.
- (b) The Subcontractor shall disclose in writing all pertinent management and financial information necessary for CDM Federal to make a responsible subcontractor determination in accordance with FAR Subpart 9.104-4. The disclosure shall include results from new conflict of interest screens in accordance with the organizational conflict of interest requirements of the Subcontract, cost impact statements for current projects, and a request for a novation or successor-in-interest agreement in accordance with FAR Subpart 42.12, if appropriate.
- (c) Failure to notify CDM Federal of a material change in ownership or financial condition will be deemed a breach of this Subcontract.

G.13 BANKRUPTCY

In the event the Subcontractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Subcontractor agrees to furnish, by certified mail or electronic commerce method authorized by the Subcontract, written notification of the bankruptcy to the CDM Federal Contract Officer responsible for administering the Subcontract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of CDM Federal subcontract numbers against which final payment has not been made. This obligation remains in effect until final payment under this Subcontract.

SECTION H SPECIAL SUBCONTRACT REQUIREMENTS

H.1 ORGANIZATIONAL CONFLICTS OF INTEREST

- (a) The Subcontractor warrants that, to the best of the Subcontractor's knowledge and belief, there are no relevant facts or circumstances which would give rise to an organizational conflict of interest, as defined in FAR Subpart 9.5, or that the Subcontractor has disclosed all such relevant information.

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- (b) The Subcontractor agrees that if an actual or potential organizational conflict of interest is discovered after award, the Subcontractor will make a full disclosure in writing to CDM Federal Contracting Officer, under terms of confidentiality, for submission by CDM Federal directly to the Government Contracting Officer. This disclosure shall include a description of actions which the Subcontractor has taken or proposes to take, after consultation between Subcontractor and CDM Federal to avoid, mitigate, or neutralize the actual or potential conflict.
- (c) Remedies - CDM Federal may terminate this Subcontract for convenience, in whole or in part if it deems such termination necessary to avoid an organizational conflict of interest. If the Subcontractor was aware of potential organizational conflict of interest prior to award or discovered an actual or potential conflict after award and misrepresented or did not disclose relevant information to the CDM Federal Contract Officer, CDM Federal may terminate the Subcontract for default; the Government may debar the Subcontractor from Government contracting; or CDM Federal may pursue such other remedies as may be permitted by law or this Subcontract.
- (d) The Subcontractor further agrees to insert in any consultant agreement or lower tier subcontract hereunder, provisions which shall conform substantially to the language of this clause, including this paragraph (d).

H.2 NOTIFICATION OF CONFLICT OF INTEREST REGARDING PERSONNEL

- (a) In addition to the requirements of the above Subcontract article entitled "Organizational Conflicts of Interest", the following provisions with regard to individual personnel performing under this Subcontract shall apply for the duration of the Subcontract.
- (b) The Subcontractor agrees to notify the CDM Federal Contract Officer of any actual, apparent, or potential conflict of interest with regard to any individual working on or having access to information regarding this Subcontract. Notification of any conflict of interest shall include both organizational conflicts of interest (as defined in the above referenced Subcontract clause) and personal conflicts of interest (which are defined as the same types of relationships as an organizational conflict of interest, but applicable to an individual).
- (c) In the event that a personal conflict of interest appears to exist, the individual who is affected shall be disqualified from taking part in any way in the performance of the assigned work which created the conflict of interest situation.

H.3 EMPLOYEE CONFIDENTIALITY AGREEMENT

The Subcontractor agrees to obtain confidentiality agreements from all personnel working on requirements under this Subcontract. Such agreements shall contain provisions which stipulate that each individual agrees not to disclose to any entity external to the U.S. Government, Department of Justice, CDM Federal, or the Subcontractor either in whole or in part any technical data provided by CDM Federal or generated by the Subcontractor, any site specific cost information, or any enforcement strategy without first obtaining the written permission of the CDM Federal Contract Officer. Such agreements shall be effective for a period of ten (10) years commencing with the effective date of the Subcontract, and shall be made available to CDM Federal upon request.

H.4 TECHNICAL DIRECTION

- (a) Performance of the work under this Subcontract shall be subject to the technical direction of the CDM Federal Program Manager, Project Manager, or his/her designee. The term "technical direction" is defined as:

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- (1) Directions to the Subcontractor which shift work emphasis between work areas, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to facilitate the contractual Statement of Work;
 - (2) Provision of written information to the Subcontractor which assists in the interpretation of drawings, specifications, or technical portions of the work description; and
 - (3) Review and approval of technical reports, drawings, specifications, and technical information to be delivered by the Subcontractor to CDM Federal under the Subcontract.
- (b) Technical direction must be within the Statement of Work contained in Article C.1 of this Subcontract. **Neither the Program Manager nor the Project Manager has the authority to issue any direction which:**
- (1) Constitutes an assignment of work outside the Statement of Work;
 - (2) Constitutes a change as defined in the Subcontract clause in Section I entitled "Changes;"
 - (3) In any manner causes an increase or decrease in the total estimated Subcontract cost, the fixed fee (if any), or the time required for Subcontract performance, or
 - (4) Changes any of the expressed terms, conditions, or specifications of the Subcontract.
- (c) The Subcontractor shall proceed promptly with the performance of technical direction duly issued by the Program Manager or Project Manager in the manner prescribed by this Article and within the authority under the provisions of this Article. If, in the opinion of the Subcontractor, any instruction or direction by the Program Manager or Project Manager falls within one of the categories defined in (b) (1) through (4) above, the Subcontractor shall not proceed but shall notify the CDM Contract Officer in writing within ten (10) working days after receipt of any such instruction or direction and shall request the CDM Federal Contract Officer to modify the Subcontract accordingly.
- (d) A failure of the Subcontractor and CDM Federal to agree that the technical direction is within the scope of the Subcontract or failure to agree upon the Subcontract action to be taken with respect thereto shall be subject to the provisions of "DISPUTES" provision in Section G.
- (e) The Program Manager may delegate authority to issue technical direction to the Project Manager.

H.5 PUBLICITY

- (a) The Subcontractor agrees to notify and obtain the verbal approval of the CDM Federal Program Manager prior to releasing any information to the news media regarding the activities being conducted under this Subcontract.
- (b) It is also agreed that the Subcontractor shall acknowledge Government support whenever the work funded in whole or in part by this Subcontract is publicized in any news media.
- (c) Subcontractor shall not use the name of CDM Federal or its parent organization, Camp Dresser & McKee Inc. (CDM), and other CDM affiliates in any advertising or publicity relating to this Subcontract without the prior written consent of CDM Federal.

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H.6 DISCLOSURE OF INFORMATION

- (a) The Subcontractor shall not release to anyone outside its organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this Subcontract or any program related to this Subcontract, unless--
 - (1) The CDM Federal Contract Officer has given prior written approval,
 - (2) The scope of work specifically allows disclosure, or
 - (3) The information is otherwise in the public domain before the date of release.
- (b) Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Subcontractor shall submit its request to the CDM Federal Contract Officer at least forty-five (45) calendar days before the proposed date for release.
- (c) The Subcontractor agrees to include a similar requirement in each lower tier consultant agreement and subcontract under this Subcontract. Lower tier consultants and subcontractors shall submit requests for authorization to release through the Subcontractor to the CDM Federal Contract Officer.

H.7 HEALTH AND SAFETY

- (a) The Subcontractor shall conform to the following requirements.
 - (1) All applicable OSHA standards, and OSHA 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response (if Subcontractor personnel perform work on or adjacent to hazardous waste sites or hazardous waste operations)
 - (2) Other applicable Federal, State and local laws and regulations.
 - (3) Safety practices standards in the hazardous waste industry.
 - (4) Provisions of the Health and Safety Section in Attachment D of this Subcontract.
- (b) If the Subcontractor does not fulfill these requirements, this Subcontract may be terminated in accordance with FAR clause entitled "Termination" in Section I of this Subcontract.

H.8 HEALTH AND SAFETY TRAINING

- (a) The Subcontractor shall certify to CDM Federal in writing that each of its employees or consultants has completed, if required, an approved training program, in relation to this project, prior to assignment of any such employee or consultant to field duty.
- (b) Costs incurred for health and safety training and medical monitoring are considered a general expense of doing business and shall not be allowable as a direct cost of this Subcontract.

H.9 MINIMUM INSURANCE REQUIRED

- (a) The Subcontractor shall procure and thereafter maintain during the entire period of performance of this Subcontract and to the extent possible, for at least three (3) years thereafter, the following insurance (indicated by **X**) with a Best rated company or approved substitute:

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- ☒ (1) Comprehensive/Commercial (General Liability) Insurance, including Contractual Liability, for bodily injury, death or loss or damage to property to third persons of at least \$1,000,000 per occurrence and \$1,000,000 in the aggregate, including when site visitation is required, XCU (explosion, collapse, and underground) hazard coverage and premises operations, independent contractor, products, completed operations, broad form contractual, personal injury with employee exclusion deleted and broad form property damage coverages. Insurance limits may be less if supplemented by \$1,000,000 per occurrence/\$1,000,000 per aggregate of Excess Umbrella Insurance.
- ☒ (2) Worker's Compensation in compliance with State worker's compensation and occupational disease statutes. Employer's Liability Insurance of at least \$500,000 per occurrence, which may be less if supplemented by \$1,000,000 per occurrence/\$1,000,000 per aggregate of Excess Umbrella Insurance.
- ☒ (3) Automobile Liability (Comprehensive), Bodily Injury and Property Damage Insurance with a combined single limit of \$1,000,000, which may be less if supplemented by \$1,000,000 per occurrence/\$1,000,000 per aggregate of Excess Umbrella Insurance.
- ☐ (4) Professional Liability "Errors and Omissions" Insurance against claims arising out of the performance of professional services in the amount of \$1,000,000 per claim/\$1,000,000 per aggregate and including coverage for the acts of lower-tier consultants and the indemnification clause contained herein. In the event that Subcontractor's work is expected to exceed \$1,000,000 in any given year of the Subcontract, the minimum coverage should be increased to \$3,000,000 per claim/\$3,000,000 per aggregate.
- ☐ (5) Pollution Liability Insurance covering sudden and accidental discharges of hazardous materials with at least coverage of \$1,000,000 per occurrence/\$1,000,000 per aggregate.
- ☐ (6) *For Hazardous and/or Non Hazardous Transport, the firm shall have all insurance required by the Department of Transportation for hazardous waste haulers and a minimum of \$5,000,000 automobile insurance including pollution coverage with MCS 90 endorsement. The Subcontractor or lower tier must meet this insurance requirement.*
- ☐ (7) If aircraft are used in the performance of this Subcontract, then aircraft public and passenger liability insurance in such amounts as CDM Federal may require or approve.
- ☐ (8) When vessels are used in the performance of this Subcontract, vessel collision liability and protection and indemnity liability insurance in such amounts as CDM Federal may require or approve.
- (b) CDM Federal Programs Corporation and the U.S. Government shall be named as additional insureds on the Subcontractor's comprehensive/commercial (general liability) insurance, automobile insurance, pollution liability (if indicated required above), and excess umbrella policies. All policies of insurance shall be endorsed so that Subcontractor's insurance shall be primary and no contribution shall be required by CDM Federal. **For all policies, the Subcontractor and its insurers shall waive their rights of subrogation against CDM Federal.**
- (c) The Subcontractor shall provide copies of its insurance certificates prior to execution of this Subcontract and upon renewal of each policy noted above. The insurance certificate(s) shall be endorsed to include thirty (30) days prior written notice of cancellation or change in limits or scope of any coverage. If the

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Subcontractor fails to make insurance premium payments or cancels its insurance, CDM Federal must be notified and all work under the Subcontract will be terminated.

- (d) The Subcontractor shall insert the substance of this clause in any lower tier subcontracts and consulting agreements under this Subcontract, including paragraph (d).

H.10 INDEMNIFICATION (*For professional services*) *Applicable* X *Not Applicable*

- (a) In addition to any other remedies that CDM Federal may have, the Subcontractor shall indemnify, hold harmless and defend CDM Federal and the Government from any and all claims, damages, demands, suits, actions, judgments, liabilities or costs or expenses of any nature including legal expenses and consequential or special damages or costs and including property damages or injury to the Subcontractor, its employees, agents, lower tier subcontractors or to any third party or its property, occasioned by any negligent or otherwise wrongful act of Subcontractor, its lower tier subcontractors or anyone for whose actions Subcontractor is legally responsible or arising from Subcontractor's breach of this Subcontract or negligent performance hereunder and arising out of work done under this Subcontract..
- (b) The Subcontractor agrees to indemnify, hold harmless and defend CDM Federal from any and all liability, claims, suits, demands, or other consequences and all costs or expenses of any nature arising from:
- (1) Claims brought by the employees of the Subcontractor.
 - (2) Any cost or pricing data furnished or required to be furnished by the Subcontractor or its lower tier subcontractors which was not complete, accurate or current.
 - (3) A violation by the Subcontractor of any applicable law, rule, or regulation.
 - (4) Any penalty or fine incurred by or assessed against CDM Federal to the extent attributable to the actions of the Subcontractor, its employees, agents, suppliers, or lower tier subcontractors.
 - (5) Any failure on the part of Subcontractor to follow health or safety procedures applicable to the site and specified by either CDM Federal or any other entity authorized to specify such procedures or any failure to follow recognized industry standards.
 - (6) Any finding involving Subcontractor's area of responsibility pursuant to the clause relating to price reduction for defective cost or pricing data.
 - (7) Any finding that Subcontractor had violated the clause requiring price or fee adjustment for illegal or improper activity (FAR 52.203-10).
 - (8) Any failure on the part of the Subcontractor to comply with the provisions of FAR 52.230-2 Cost Accounting Standards, or FAR 52.230-6 Administration of Cost Accounting Standards, if applicable to this Subcontract.
 - (9) Any failure on the part of Subcontractor to provide any certification or supporting information required hereunder or under applicable laws or regulations.
 - (10) The provision by the Subcontractor of any false or erroneous certification or supporting information required hereunder or under applicable laws or regulations.
 - (11) Any strict or statutory liability imposed due to Subcontractor's activities arising out of performance of this Subcontract.

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- (c) The indemnification stated in Clauses (a) and (b) above shall be enforced to the maximum extent permitted by applicable law, and, if permitted by law, shall expressly apply to Subcontractor's negligence or other tort, breach of contract or warranty, strict or statutory liability. The parties waive the protection of applicable worker's compensation acts, to the extent permitted or required by applicable law. The indemnifications provided in this Subcontract shall extend to the indemnitee, its affiliated companies and their officers, directors, employees and shareholders. This indemnification shall extend to claims raised by the Subcontractor's employees and those of its lower tier subcontractors. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for, the Subcontractor or any lower tier subcontractor under worker's compensation statutes.
- (d) Except as provided in this indemnification provision, in no event shall either party be responsible or liable for indirect, special, punitive, incidental or consequential damages or lost profits or revenues, even if the other party has been advised of the possibility of such damages.
- (e) In the event that it is necessary to enforce the indemnity obligation herein, the losing party in any such enforcement action shall pay the prevailing party's court costs and reasonable attorney's fees.
- (f) Subcontractor acknowledges specific payment of one hundred dollars (\$100) incorporated into the Payment made under this Agreement and other valuable consideration the receipt and adequacy which is also acknowledged as legal consideration for Subcontractor's indemnity obligations as may be provided in this Agreement.

H.11 INDEMNIFICATION (For nonprofessional services) X *Applicable* *Not Applicable*

- (a) To the fullest extent permitted by law, Subcontractor shall indemnify, defend and hold harmless CDM Federal, the Government and their consultants, officers, directors, employees and agents from and against all claims, costs, losses and damages (including but not limited to all fees and other charges of engineers, architects, attorneys and other professionals and all court and arbitration or other dispute resolution costs) including any and all claims brought by the employees of the Subcontractor caused by, arising out of, or resulting from the performance of the work under this subcontract, provided that any such claim, cost, loss or damage is: (1) attributable to bodily injury, sickness, disease or death, or to injury to, or the destruction of, tangible property including loss of use resulting therefrom; or, (2) is caused in whole or in part by any act or omission of the Subcontractor, lower-tier subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform the work described in this subcontract or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by the negligence or omission of a person or entity indemnified hereunder (except for the sole negligence of a person or entity indemnified hereunder) or whether liability is imposed upon such indemnified party by laws or regulations regardless of the negligence of any such person or entity.
- (b) The Subcontractor hereby covenants and agrees to indemnify, save harmless and defend CDM Federal and the Government from any and all claims, costs, losses, damages, or suits arising from the following:
 - (1) Infringements of patents or copyrights or violation of patent or copyrights.
 - (2) Any cost or pricing data furnished or required to be furnished by Subcontractor or its lower-tier subcontractors which is not complete, accurate or current.
 - (3) A violation by Subcontractor of any applicable law, rule or regulation.
 - (4) Any penalty or fine incurred by or assessed against CDM Federal that is attributable to the actions of Subcontractor, its employees, agents, suppliers or its lower-tier subcontractors.

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- (5) Any failure on the part of Subcontractor to follow health or safety procedures applicable to the site and specified by either CDM Federal or any other entity authorized to specify such procedures or any failure to follow recognized industry standards.
 - (6) Any finding involving Subcontractor's area of responsibility pursuant to the clause relating to price reduction for defective cost or pricing data.
 - (7) Any finding that Subcontractor had violated the clause requiring price or fee adjustment for illegal or improper activity (FAR 52.203-10).
 - (8) Any failure on the part of Subcontractor to comply with the provisions of FAR 52.230-2 -- Cost Accounting Standards, or FAR 52.230-6 -- Administration of Cost Accounting Standards, if applicable to this Subcontract.
 - (9) Any failure on the part of Subcontractor to provide any certification or supporting information required hereunder or under applicable laws or regulations.
 - (10) The provision by Subcontractor of any false or erroneous certification or supporting information required hereunder or under applicable laws or regulations.
- (c) The indemnification stated in paragraphs (a) and (b), above, shall be enforced to the maximum extent permitted by applicable law. The parties waive the protection of applicable Worker's Compensation acts, to the extent permitted or required by applicable law. The indemnifications provided in this Subcontract shall extend to the indemnitee, its affiliated companies and their officers, directors, employees and shareholders. This indemnification shall extend to claims raised by Subcontractor's employees and those of its lower-tier subcontractors. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable, by or for, Subcontractor or any lower-tier subcontractor under Worker's Compensation statutes.
- (d) Except as provided in this indemnification provision, in no event shall either party be responsible or liable for indirect, special, punitive, incidental or consequential damages or lost profits or revenues, even if the other party has been advised of the possibility of such damages.
- (e) In the event it is necessary to enforce the indemnity obligation herein, the losing party in any enforcement action shall pay the prevailing party's court costs and attorneys' fees.
- (f) Subcontractor acknowledges specific payment of one hundred dollars (\$100) incorporated into the Payment made under this Agreement and other valuable consideration the receipt and adequacy which is also acknowledged as legal consideration for Subcontractor's indemnity obligations as may be provided in this Agreement.

H.12 COMPLIANCE WITH CURRENT REGULATIONS AND REQUIREMENTS

- (a) Subcontractor shall, in the performance of this Subcontract, comply with all applicable statutes, rules, regulations, and orders of the United States, including, without limitation, insofar as applicable to this Subcontract, rules regarding Equal Employment Opportunity (Executive Order 11246), the Fair Labor Standards Act of 1938 (29 U.S.C. 201-219), the Work Hours and Safety Act of 1962 (40 U.S.C. 327-333), the Service Contract Act of 1965 (41 U.S.C. 351 *et seq.*), the Vietnam Era Veteran's Readjustment Assistance Act of 1972 (38 U.S.C. 4211 and 4212), the Rehabilitation Act of 1973 (29 U.S.C. 793), the Immigration Reform and Control Act of 1986 (8 U.S.C. 1101 *et seq.*), and any amendments thereto.

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- (b) The Subcontractor is responsible for the actions of its employees and for seeing that the services rendered hereunder conform to the applicable laws, rules, regulations, ordinances, codes, orders and special requirements of the location where its services are to be performed pursuant to the Subcontract. The Subcontractor will fully comply, at no additional cost to either CDM Federal and/or the Government, with all current regulations and requirements of the owners of the surrounding properties when performing the required field services as described in this Subcontract.
- (c) Subcontractor shall, at its own expense, obtain all necessary permits and licenses required for the services required hereunder.

H.13 PATENTS AND COPYRIGHTS

- (a) Subcontractor shall be responsible for the payment of any license fees that may be required by the patent and/or patent holder(s) on applicable technology. In addition, Subcontractor shall hold CDM Federal harmless from infringement of patents or non-payment of license fees.
- (b) In order to avoid, mitigate or neutralize an actual or potential conflict of interest, if the Subcontractor anticipates the use of corporate patents or other proprietary technologies unique to the Subcontractor for use in remedial design and/or remedial action, the Subcontractor shall notify CDM Federal in writing of the intent to use such patents or proprietary technologies within eight (8) days of the issuance of the Subcontract.
- (c) Subcontractor hereby assigns to CDM Federal the entire right, title and interest for the entire world in and to all work performed, all data first produced, writing(s), formula(s), design(s), model(s), drawing(s), photograph(s), design invention(s), and any other inventions made, conceived or reduced to practice or authorized by the Subcontractor or the Subcontractor's employees, either solely or jointly with others, during the performance of the Subcontract. With respect to any computer software, databases or other licensed product acquired under this subcontract for use therein, the Subcontractor shall ensure that the license, together with any associated rights, shall run to or automatically be assigned to CDM Federal.

H.14 RETENTION AND AVAILABILITY OF SUBCONTRACTOR FILES

- (a) This Subcontract contains the FAR clause entitled "AUDIT AND RECORDS" in Section I wherein the Subcontractor is required to maintain and make available to the Government Contracting Officer or representative of the Government Contracting Officer (in accordance with FAR Subpart 4.7 "Contractor Records Retention") at its office at all reasonable times the books, records, documents, and other evidence relating to this Subcontract including personnel utilization records, site records, and accounting procedures and practices sufficient to reflect properly all costs claimed to have been incurred under this Subcontract. Such files shall be made available for examination, audit or reproduction.
- (b) The Subcontractor is advised that the Government may file suit against potential responsible parties for costs incurred relative to site-related cleanup activities. In such proceedings, the Subcontractor's cost and performance records may become an integral part of the Government's case.
- (c) Accordingly, due to the extended nature of court proceedings and Government audit requirements, the Subcontractor shall make available to the Government, and only to the Government, all audit and financial information relative to the work conducted under this Subcontract as well as the information required in the Audit Clause for a total of 3 years after final payment under this Subcontract (See FAR 4.703(b)(1)).

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- (d) In addition, the Subcontractor shall make available to the Government and only to the Government the records relating to any appeals, litigation or the settlement of claims with third parties and which relate to this Subcontract (i.e., cost recovery) until such appeals, litigation, or claims are disposed of.
- (e) The Subcontractor shall not destroy original records relating to the subcontract until:
 - (1) All litigation involving the records has been finally settled and approval is obtained from CDM Federal; or
 - (2) Three (3) years have passed from the date of final payment and no litigation involving the records has been instituted and approval of CDM Federal is obtained.

In no event should individual records be destroyed if litigation is in process or is pending related to such records.

- (f) From time to time, the Government may, in support of litigation cases, have the need for the Subcontractor to research and make available such records in a form and manner not normally maintained by the Subcontractor. Such effort shall be deemed to be within the scope of work under this Subcontract. If this effort is required after performance of this Subcontract, a separate negotiated procurement action may be instituted with the Subcontractor.
- (g) The final invoice (completion voucher) submitted hereunder, after physical completion of the Subcontract within the stated period of performance, will represent the final claim under the Subcontract.

H.15 SUBCONTRACTOR PERSONNEL

- (a) All Subcontractor personnel shall be United States citizens or individuals with valid visas and work permits.
- (b) If, at any time, CDM Federal finds any Subcontractor employee, agent, consultant or representative to be unacceptable, for whatever reason, CDM Federal may request the Subcontractor to replace at no additional cost that employee, agent, consultant or representative with another person who has at least the equivalent level of qualifications.

H.16 NON-PERSONAL SERVICES

- (a) No personal services as defined in Part 37 of the FAR shall be performed under this Subcontract. The Government or CDM Federal will not directly supervise a Subcontractor employee. All individual employee assignments, and daily work direction, shall be given by the Subcontractor's supervisor. If the Subcontractor believes any Government or CDM Federal action or communication has been given that would create a personal services relationship between the Government or CDM Federal and any Subcontractor employee, the Subcontractor shall promptly notify the CDM Federal Contract Officer of this communication or action.
- (b) The Subcontractor shall not perform any inherently Governmental or Contractor functions under the Subcontract. No Subcontractor employee shall hold him or herself out to be Government or Contractor employee, agent, or representative. In all communications with third parties in connection with this Subcontract, Subcontractor employees shall identify themselves as Subcontractor employees and specify the name of company for which they work and the name of the prime contractor team they are on. In all communications with other Government Contractors in connection with this Subcontract, the Subcontractor employee shall state that they have no authority to in any way change the Subcontract and that if the other Contractor believes this communication to be a direction to change their contract,

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they should notify the Contracting Officer for that contract and not carry out the direction until clarification has been issued by the Contracting Officer.

- (c) The Subcontractor shall insure that all of its employees working on this Subcontract are informed of the substance of this clause. Nothing in this clause shall limit the Government's or Contractor's rights in anyway under any other provision of the Subcontract, including those related to the Government's and Contractor's right to inspect and accept the services to be performed under this Subcontract.

H.17 SUBCONTRACTOR WARRANTIES

- (a) In addition to and without prejudice to all warranties expressed or implied by law, Subcontractor warrants that all services covered by this Subcontract will conform to the drawings, technical requirements, or their descriptions and will be of good workmanship and free of defects.
- (b) Subcontractor warrants that the price(s) specified in this Subcontract do not exceed the current selling prices for the same or substantially similar services whether sold to the Government or to any other purchaser, taking into account the quantity and conditions of sale.
- (c) Subcontractor warrants that to the best of Subcontractor's knowledge, information, and belief, the prices charged for services covered by this Subcontract are not in excess of prices permitted by any applicable law or regulation.
- (d) Subcontractor warrants that the technical and management personnel proposed to perform the work hereunder are qualified to perform their assigned tasks and that the services provided shall conform to high professional standards.
- (e) Subcontractor warrants that it has obtained all required licenses and/or permits necessary to perform the work under this Subcontract.
- (f) Subcontractor warrants that it shall not make use of nor disclose any information in violation of any express written or oral obligation, or any implied obligation, to any third party.
- (g) Subcontractor's warranties, together with its service guarantees, shall run to CDM Federal and the Government and are not deemed to be exclusive. CDM Federal or Government inspection, approval, acceptance, use of, or payment for services shall in no way affect CDM Federal warranty rights, whether or not a breach of warranty is evident at the time.
- (h) The warranties set forth in this Subcontract shall survive expiration or termination of this Subcontract. CDM Federal rights under this Section are cumulative and non-exclusive and in addition to all other rights and remedies that CDM Federal may have in law or equity or under this Subcontract.

H.18 LITIGATION AND CLAIMS

- (a) Subcontractor shall give CDM Federal immediate notice in writing regarding the following:
 - i) Any action including any proceedings before a federal, state or local Government court or agency, filed against the Subcontractor arising out of the performance of this Subcontract; and
 - ii) Any claim by a third party against the Subcontractor, the cost and expense of which is, or may be allowable under this Subcontract.

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- (b) In the event of the occurrence of either of the above, the Subcontractor shall immediately furnish to CDM Federal copies of all pertinent papers and documents received by Subcontractor with respect to such action or claim.

H.19 SURVIVAL OF PROVISIONS

In addition to the rights and obligations that survive as expressly provided for elsewhere in this Subcontract, the articles and provisions, that by their nature should survive, shall survive and continue after any termination or cancellation of the Subcontract.

H.20 LIQUIDATED DAMAGES *Applicable* X *Not Applicable*

- (a) Unusable or Missing Sample Data Packages.

CDM Federal shall not be obligated to pay for any Sample Data Package that is either lost or missing or not usable because Subcontractor has failed to meet one or more requirements of this Subcontract. The data may be unusable because, for example, the sample has been lost or broken after delivery to Subcontractor, critical analysis information is missing and additional sampling is required, mandated holding times have been missed, critical tests have not been performed, quality control checks show that the specified requirements have not been met, or for any other reason arising from Subcontractor's failure to meet the requirements of this Subcontract. Samples shall assume to have been lost if the Sample Data Packages have not been received by the appropriate party within fifteen (15) days of the due date set forth herein.

Subcontractor assumes the risk of loss for all samples immediately after their delivery to Subcontractor or its agent.

- (b) Sample Data Packages Usable for Alternative Purposes or Accepted for Use in a Non-compliant State.

Subcontractor may receive a partial payment, based upon an equitable adjustment, for its services in producing Sample Data Packages which the CDM Federal Contract Officer determines have some value to the CDM Federal's client, although not useful for the original purpose of the Subcontract. The CDM Federal Contract Officer shall determine such alternative value and notify the Subcontractor. Subcontractor's acceptance of such alternative payment shall constitute a waiver of any claim for additional payment.

- (c) Late Delivery.

If Subcontractor fails to deliver any Sample Data Package within the time specified herein, or any authorized extension thereof, each party recognizes that CDM Federal will suffer damage to its reputation and relations with its client(s). Each party also recognizes that such damages are difficult to prove in any legal proceeding. Therefore, in lieu of damages for such injury to reputation due to failure to deliver the Sample Data Packages within the contractually specified time, and not as a penalty, and in recognition of the damage to client relations and CDM Federal's reputation only, the parties agree to the following as fixed, and liquidated damages for each calendar day of delay the sum in accordance with the following schedule (*Adjust schedule, as required, to suit Statement of Work*):

Day 1-10	<u>5</u> % of sample unit price per sample
Days 11-15	<u>10</u> % of sample unit price per sample per day
	100%

After the fifteenth day, the sample shall be considered lost or missing and treated as specified in paragraph (a) above.

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Sample Data Packages received more than fifteen (15) days after they are due may, at the sole discretion of the CDM Federal Contract Officer, be treated as in paragraph (b) above and subject to an equitable payment not to exceed 25% of the sample unit price.

- (c) Data which was delivered on time, but determined to be defective for any reason and, where it is determined that the defect can be corrected, will be subject only to a one-time 10% liquidated damages assessment if the corrected data is returned during the agreed upon correction period. Such data as is not corrected during the correction period, but still used in its non-compliant form, will be treated as set forth in paragraph (b) above.
- (e) CDM Federal retains the right to terminate this Subcontract for any noncompliance in accordance with the terms thereof, including any of the noncompliance matters set forth above, in accordance with the clause in Section I entitled "Default (Fixed-Price Supply and Service)". In the event that CDM Federal elects to terminate the Subcontract, the Subcontractor shall be liable for the fixed, agreed and liquidated damages in paragraph (c), accruing until all outstanding Sample Data Packages are delivered. The liquidated damages shall be in addition to excess reprourement costs eligible for reimbursement under the clause in Section I entitled "Termination".

The Subcontractor shall not be charged with any damages (liquidated or otherwise) nor subject to Default Termination when the delay in delivery or performance arises out of causes beyond the control, or without the fault or negligence of Subcontractor as defined in the clause entitled, "Default (Fixed-Price Supply and Service)" of this Subcontract.

- (f) In addition to the above provisions, Subcontractor remains liable for failure to deliver any single deliverable in accordance with the clause entitled, "Inspection of Services (Fixed-Price)" in Section I. The equitable adjustment made by the CDM Federal Contract Officer will include as a minimum any liquidated damages adjustments assessed in accordance with Paragraphs (a)-(e) of this Article. In addition, it will include any other costs incurred by CDM Federal as a consequence of Subcontractor's failure to meet the requirements of this Subcontract including the costs of any re-sampling that are required and any other costs associated with the replacement of lost, damaged or destroyed samples.

H.21 SAMPLE RETENTION AND DISPOSAL *Applicable* X *Not Applicable*

Unless otherwise instructed by CDM Federal, the Subcontractor shall dispose of unused sample volume and used sample bottles and containers no earlier than sixty (60) days following submission of analytical data. Sample disposal and disposal of used sample bottles/containers is the responsibility of the Subcontractor. Any samples which contain hazardous material shall be disposed in accordance with all applicable laws and regulations governing disposal of such materials.

H.22 DATA TO BECOME PROPERTY OF CDM FEDERAL

- (a) All raw data and laboratory results shall be and remain the sole property of CDM Federal upon payment for such results.
- (b) Neither the Subcontractor nor any of his lower-tier subcontractors, consultants, agents, servants or employees, nor anyone under his control may, upon completion of the work, retain any copies of any technical data received from or through CDM Federal or developed in the performance of this Subcontract including but not limited to drawings, models, work papers, photographs, plans and diagrams.
- (c) Nothing herein is meant to preclude the Subcontractor from retaining normal business records, personnel data, or other records whose retention is required by, or needed for, the preparation of returns for any government agency, or whose retention is required by this Subcontract.

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H.23 KEY PERSONNEL

- (a) The Subcontractor shall assign to this Subcontract the following key personnel: Steve Ludlow.
- (b) During the first 120 days of performance, the Subcontractor shall make no substitutions of key personnel unless the substitution is necessitated by illness, death, or termination of employment. The Subcontractor shall notify the CDM Federal Program Manager within (10) calendar days after the occurrence of any of these events and provide the information required by paragraph (c) below. After the initial 120-day period, the Subcontractor shall submit the information required by paragraph (c) to the CDM Federal Program Manager at least 15 days prior to making any permanent substitution.
- (c) The Subcontractor shall provide a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the CDM Federal Program Manager. Proposed substitutes should have comparable qualifications to those of the persons being replaced. The Program Manager will notify the Subcontractor within 15 calendar days after receipt of all required information of the decision on substitutions. This Clause will be modified to reflect any approved changes of key personnel.

H.24 FAILURE TO DELIVER

If the Subcontractor fails to provide any single deliverable, CDM Federal shall be reimbursed for any costs determined by the CDM Federal Subcontracts Manager as equitable in accordance with FAR 52.246-4 - Inspection of Services - Fixed Price. In addition to that amount, it will include any other costs incurred by CDM Federal as a result of the Subcontractor's failure to deliver.

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PART II SUBCONTRACT CLAUSES

SECTION I SUBCONTRACT CLAUSES

I.1 GENERAL RULES OF CONSTRUCTION

- (a) This Subcontract incorporates the Federal Acquisition Regulation (FAR) clauses listed in the following article and elsewhere herein by reference. The text of each clause shall be deemed to be modified with respect to the identification of parties as provided in paragraphs (b) and (c) below. **The most recently dated clauses are incorporated by reference with the same force and effect as if they were given in full text.** Copies of the FAR can be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (reference Title 48 Code of Federal Regulations, Chapter 1) or via the Internet site at <http://www.acqnet.gov>.
- (b) Unless one of the exceptions provided in paragraph (c) below shall apply, the term "Contract" shall mean "Subcontract"; the term "Contractor" shall mean "Subcontractor"; the term "Government" shall mean "CDM Federal"; and the term "Contracting Officer" shall mean the "CDM Federal Contract Officer".
- (c) The following instances are exceptions to the general rules of construction as provided in paragraph (b):
 - (i) Where it is clear, by the context of the provision itself or the conditions under which it is being applied, that the reference is intended to refer to the Government, its officers or agents, or the prime contractor specifically;
 - (ii) Where an explicit provision of this Subcontract states a contrary intent;
 - (iii) Where access to proprietary financial information or other proprietary data is required; or
 - (iv) Where interpretation in accordance with the rules stated above would place the prime contractor in a position of violating the equivalent or related provisions of the prime contract whereas construction of the terms without modification would not.
- (d) References in any provision incorporated by reference herein to the "Disputes" clause shall be construed as references to the "Disputes" clause contained in Section G of this Subcontract. No provision herein shall be taken to imply any direct access on the part of the Subcontractor to the disputes process as defined in the terms of the prime contract.
- (e) Sections of Clauses that apply to this Subcontract are indicated by "X"

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1.2 FAR CLAUSES INCORPORATED BY REFERENCE

[X] The Following Clauses Apply to All Subcontracts:

Notice to the Government of Labor Disputes	52.222-1
Prohibition of Segregated Facilities	52.222-21
Equal Opportunity	52.222-26
Hazardous Material Identification and Material Safety Data	52.223-3
Drug-free Workplace (Note: Only If Awarded to an Individual)	52.223-6
Authorization and Consent	52.227-1
Rights in Data-General	52.227-14
Prompt Payment	52.232-25
Protection of Government Buildings, Equipment and Vegetation	52.237-2
Notification of Changes	52.243-7
Subcontracts for Commercial Items	52.244-6

[X] The Following Clauses Apply to Subcontracts Exceeding \$2,500:

Convict Labor	52.222-3
Restrictions on Certain Foreign Purchases	52.225-13

[X] The Following Clauses Apply to Subcontracts Exceeding \$10,000:

Affirmative Action for Workers with Disabilities	52.222-36
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[X] The Following Clauses Apply to Subcontracts Exceeding \$25,000:

Affirmative Action for Special Disabled and Vietnam Era Veterans	52.222-35
Employment Reports on Special Disabled Veterans and Veterans Of the Vietnam Era	52.222-37

[] The Following Clauses Apply to Subcontracts Exceeding \$100,000:

Gratuities	52.203-3
Covenant Against Contingent Fees	52.203-5
Restrictions on Subcontractor Sales to the Government	52.203-6
Anti-kickback Procedures	52.203-7
Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	52.203-8
Price or Fee Adjustment for Illegal or Improper Activity	52.203-10
Limitation on Payments to Influence Certain Federal Transactions	52.203-12
Printed or Copied Doubled-Sided on Recycled Paper	52.204-4
Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	52.209-6
Utilization of Small Business Concerns	52.219-8
Limitations on Subcontracting (Note: Only applies to the small business set-aside portion of the subcontract)	52.219-14
Contract Work Hours and Safety Standards Act - Overtime Compensation	52.222-4
Drug-free Workplace	52.223-6
Waste Reduction Program	52.223-10
Toxic Chemical Release Reporting	52.223-14

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Federal, State, and Local Taxes	52.229-3
Interest	52.232-17
Subcontracts	52.244-2
 [] The Following Clauses Apply to Subcontracts Exceeding \$500,000:	
Liquidated Damages - Subcontracting Plan	52.219-16
Utilization of Indian Organizations and Indian-owned Economic Enterprises	52.226-1
 [] The Following Clauses Apply to Sealed Bidding Subcontracts Exceeding \$500,000:	
Small Business Subcontracting Plan, Alternate I	52.219-9
 [] The Following Clauses Apply to Sealed Bidding Subcontracts Exceeding \$550,000:	
Audits and Records - Sealed Bidding	52.214-26
Price Reduction for Defective Cost or Pricing Data - Modifications - Sealed Bidding	52.214-27
Subcontractor Cost or Pricing Data - Modifications - Sealed Bidding	52.214-28
 [] The Following Clauses Apply to Negotiated Subcontracts Exceeding \$100,000:	
Audits and Records - Negotiation	52.215-2
Integrity of Unit Prices	52.215-14
Competition in Subcontracting	52.244-5
 [] The Following Clauses Apply to Negotiated Subcontracts Exceeding \$500,000:	
Small Business Subcontracting Plan	52.219-9
 [] The Following Clauses Apply to Negotiated Subcontracts Exceeding \$550,000:	
Price Reduction for Defective Cost or Pricing Data	52.215-10
Price Reduction for Defective Cost or Pricing Data - Modifications	52.215-11
Subcontractor Cost or Pricing Data	52.215-12
Subcontractor Cost or Pricing Data - Modifications	52.215-13
 [] The Following Clauses Apply to Architect-Engineer (A-E) Subcontracts:	
Payments under Fixed-Price Architect-Engineer Contracts	52.232-10
Prompt Payment for Fixed-Price Architect-Engineer Contracts	52.232-26
Design Within Funding Limitations	52.236-22
Responsibility of Architect-Engineer Contractor	52.236-23
Work Oversight in Architect-Engineer Contracts	52.236-24
Requirements for Registration of Designers	52.236-25
Suspension of Work	52.242-14
Changes - Fixed Price, Alternate III	52.243-1
Subcontractors and Outside Associates and Consultants	52.244-4
Termination (Fixed-price Architect-Engineer)	52.249-7

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[X] The Following Clauses Apply to Fixed Price Subcontracts:

Payments	52.232-1
Changes -- Fixed-price, Alternates I and III	52.243-1
Government Property (Fixed-price Contracts)	52.245-2
Inspection of Services -- Fixed-price	52.246-4
Termination for Convenience of the Government (Fixed Price)	52.249-2
Default (Fixed-price Supply & Service)	52.249-8

[] The Following Clauses Apply to Time & Materials Subcontracts:

Payments under Time-and-Materials and Labor-Hour Contracts	52.232-7
Changes - Time-and-Materials or Labor-Hours	52.243-3
Government Property (Cost Reimbursement, Time-and-Material or Labor-Hour Contracts)	52.245-5
Inspection - Time-and-Material and Labor-Hour	52.246-6
Termination for Convenience of the Government (Fixed Price) (Short Form)	52.249-1
Termination (Cost Reimbursement) Alternate IV	52.249-6
Excusable Delays	52.249-14

[] The Following Clauses Apply to Cost Reimbursement Subcontracts:

Allowable Cost and Payment	52.216-7
Fixed Fee	52.216-8
Limitation of Cost	52.232-20
Limitation of Funds	52.232-22
Notice to Intent to Disallow Costs	52.242-1
Changes - Cost Reimbursement, Alternate I	52.243-2
Subcontracts, Alternate II	52.244-2
Government Property (Cost Reimbursement, Time-and-Material or Labor-Hour Contracts)	52.245-5
Inspection of Services - Cost Reimbursement	52.246-5
Termination (Cost Reimbursement)	52.249-6
Excusable Delays	52.249-14

[] The Following Clauses Apply to Fixed Priced Construction Subcontracts:

Commencement, Prosecution, and Completion of Work	52.211-10
Davis-Bacon Act	52.222-6
Withholding of Funds	52.222-7
Payroll and Basic Records	52.222-8
Apprentices and Trainees	52.222-9
Compliance with Copeland Act Requirements	52.222-10
Subcontract (Labor Standards)	52.222-11
Contract Termination - Debarment	52.222-12
Compliance with Davis-Bacon and Related Act Regulations	52.222-13
Disputes Concerning Labor Standards	52.222-14
Certification of Eligibility	52.222-15
Payments under Fixed Priced Construction Contracts	52.232-5
Prompt Payment for Construction Contracts	52.232-27
Differing Site Conditions	52.236-2
Material and Workmanship	52.236-5

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Superintendence by the Contractor	52.236-6
Permits and Responsibilities	52.236-7
Suspension of Work	52.242-14
Inspection of Construction	52.246-12
<i>Warranty of Construction</i>	52.246-21
Termination for Convenience of the Government (Fixed Price), Alternate I	52.249-2
Default (Fixed-Price Construction)	52.249-10

I.3 ALTERATIONS TO SUBCONTRACT

In addition to other alterations, exceptions, or other modifications to clauses which may be included elsewhere in this Subcontract, the following additional changes are made:

- (a) FAR 52.222-26 "Equal Opportunity" - Paragraph (c) does not apply.
- (b) DEAR 970.5232-3 "Accounts, Records, and Inspection" - Paragraph (c) does not apply.

I.4 AUTHORIZED DEVIATIONS IN CLAUSES

If any FAR clause is used in this Subcontract with an authorized deviation, it will be indicated by the addition of '(Deviation)' after the name of the clause.

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PART III: LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

SECTION J LIST OF ATTACHMENTS

J.1 LIST OF ATTACHMENTS

- Supplemental Terms and Conditions
- Service Contract Act - Wage Determinations
- Attachment A - Statement of Work
- Attachment B - Payment Schedule/Price Sheet
- Attachment C - Reports of Work and Deliverables
- Attachment D - Health and Safety
- Attachment E - Quality Assurance Plan (*if applicable*)
- Attachment F - Subcontracting Plan (*if applicable*)
- Attachment G - Release and Certificate of Final Payment

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ATTACHMENT A
STATEMENT OF WORK

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ATTACHMENT B

PAYMENT SCHEDULE/PRICE SHEET

Subcontractor will provide up to 7,000 cubic yards of fill material in situ, equipment and labor to grade haul road and ramp for haul truck access, excavate, load, haul, place and grade material to construct working platform above existing water table at the rate of \$4.25 per yard, trucked quantity.

PART 2 BACKGROUND

2.1 INTRODUCTION

Under the United States Army Corps of Engineers (USACE), Kansas City District, Contract No. DACW 41-02-D-0002, Task Order No. 019, CDM Federal Programs Corporation (CDM) is procuring backfilling and drilling services for a pre-design field investigation at the Ludlow Sand and Gravel Superfund Site (the Site) located in the Town of Paris, Oneida County, New York (Figure 1-1). The purpose of the pre-design field investigation is to further delineate soils contaminated with polychlorinated biphenyls (PCBs) in the North Gravel Pit (NGP) portion of the Site.

2.2 SITE LOCATION

The Site, located approximately six miles south of Utica in Paris, New York, encompasses approximately 60 acres with landfill activities confined to approximately 18 acres. The landfill area is fenced on the western boundary along Holman City Road. The south and east sides of the landfill are bounded by a designated wetland and an unnamed stream, while on the north, the landfill is bounded by the NGP (Figure 1-2).

2.3 SITE HISTORY AND DESCRIPTION

The landfill began receiving municipal refuse from surrounding communities in the 1960's. The landfill also received bulk liquid, including septage, waste oils, coolants, and sludges containing metals that were disposed of by surface application. The on-site gravel pit, NGP, was also periodically used for the disposal of bulk waste oil loads. It appears that drummed liquids were bulked using a vacuum truck and were also applied to the landfill via surface application. The landfill continued to accept waste until it was shut down by court order in 1988. As early as 1966, New York State (NYS) cited the owner/operator, Mr. Ludlow, for improper or illegal waste disposal practices. A variety of legal actions were taken against Mr. Ludlow in response to legal complaints made by the NYS Department of Law (NYSDOL) over the years.

Preliminary site investigations conducted by NYS in 1982 identified the presence of PCBs in leachate seeps emanating from the landfill. Based on this information, the site was added to the United States Environmental Protection Agency's (EPA) list of hazardous waste sites known as the Superfund National Priorities List (NPL). In 1984, the NYSDOL and the NYS Department of Environmental Conservation (NYSDEC) attempted to negotiate with Mr. Ludlow for site investigation and remedial action; negotiations failed.

After multiple rounds of sampling, analysis, and contaminant delineation by various engineering consultants, EPA signed a Record of Decision (ROD) on September 30, 1988. In the ROD, EPA, in consultation with the State, divided the Site into two Operable Units (OU)s:

- OU1 ("Source Control") addressed the landfill
- OU2 ("Off-site Impacts") addressed contamination in off-site groundwater, the on-site wetlands, and the NGP.

All the work associated with implementation of the OU1 ROD was completed between 1990 and 1991 by the PRP pursuant to a Consent Decree with NYS. In addition, during the implementation of the OU1 ROD, portions of OU2 were remediated (wetlands, off-site groundwater and the majority of the NGP). Approximately 60,000 cubic yards (CY) of soil were excavated from the NGP. Approximately 40,000 CY (1,022,200 tons) were found to be contaminated with PCBs and were consolidated into the landfill prior to completion of the cap. The other 20,000 CY had non-detectable levels of PCBs and were placed on the bank of the NGP. The total amount of soil that

was excavated from the NGP was greater than anticipated and the excavation, using conventional excavation equipment, became difficult when groundwater was encountered. It was decided to end the NGP excavation efforts in October 1991, and to reassess the extent of contamination in the pit area and develop other alternatives for addressing the remaining contamination.

On March 2003, EPA and NYSDEC signed a ROD for OU2. The selected remedial alternative for the (OU2) NGP is to use grout to solidify (in situ) the PCB-contaminated soils located below the water table. One of the components of the remedy for OU2 includes the implementation of a pre-design delineation sampling program to determine the precise area to be grouted (vertically and horizontally). The results of the required sampling program will be utilized to develop a conceptual design report; hence the reason for this SOW.

The cleanup criteria established for soil contaminated with PCBs is 10 mg/kg, which is found in NYSDEC Technical and Administrative Guidance Memorandum No. 94-HWR-4046 (TAGM 4046).

2.4 CURRENT CONDITIONS

Multiple rounds of soil and groundwater samples were previously collected at the site to characterize the nature and extent of contamination as part of the supplemental RI. These data indicate that the compounds that exceed NYSDEC environmental standards, criteria and guidance are PCBs from waste oils, and are generally limited to soils at the bottom of the NGP. The oils were discarded onto the ground surface and have migrated vertically downward through the soil to groundwater. Exposure via direct contact and ingestion exist for both human and ecological receptors.

At the time of the Consent Judgement (1988), the NGP was a shallow depression which had resulted from previous sand and gravel quarrying operations. Following the 1990-1991 remedial work, excavation of soils increased the depth of the NGP to approximately 16 to 18 feet below the former grade. The ground surface in the vicinity of the NGP has changed over the years and is currently marked by small hills and depressions. Ground elevations generally increase south and east of the NGP, and decrease north and west of the site.

The NGP is currently approximately one acre in size and is located 700 to 900 feet north of the closed landfill. The pit is approximately 20 to 30 feet deep. The area at the bottom of the pit is approximately 16,200 square feet and contains a pool of standing water. The current physical characteristics of the NGP, including steep side slopes and the standing pool of water, complicate collection of subsurface soil samples.

Groundwater elevation data indicate that the depth to groundwater varies across the site from approximately 3 to 40 feet. This variability is largely due to topographic changes across the site. Groundwater elevations indicate a north to northwest shallow groundwater flow direction. The topography in the vicinity of the pit indicates that surface water runoff from surrounding areas drains to the bottom of the pit. The standing water at the bottom of the pit indicates that the pit intersects groundwater. Therefore, surface water recharge may potentially impact shallow groundwater flow in the vicinity of the NGP.

Sauquoit Creek, a tributary of the Mohawk River, is located approximately 4,500 feet west of the NGP. The NGP is located approximately 700 feet from the Town of Saquoit's public water supply wells. (Although the Town of Saquoit's public water supply wells were never contaminated in the past, they are hydraulically downgradient of the NGP).

The Ludlow facility is still active as a small-scale sand and gravel quarry; the facility is currently operating well below its full capacity.

STATEMENT OF WORK
Ludlow Sand and Gravel Superfund Site
Town of Paris, Oneida County, New York

3.1 INTRODUCTION 3.1

- A. Under the United States Army Corps of Engineers (USACE), Kansas City District, Contract No. DACW 41-02-D-0002, Task Order No. 019, CDM Federal Programs Corporation (CDM) is procuring backfilling services for a pre-design field investigation at the Ludlow Sand and Gravel Superfund Site (the Site) located in the Town of Paris, Oneida County, New York (Figure 1-1). The purpose of the pre-design field investigation is to further delineate soils contaminated with polychlorinated biphenyls (PCBs) in the North Gravel Pit (NGP) portion of the landfill. CDM, the Contractor, is procuring a Subcontractor to provide backfilling services in the NGP portion of the Site.

3.2 GENERAL OVERVIEW OF WORK

- A. The compound of concern in soil is PCBs.
- B. Backfilling Operation:
1. Mobilization for backfilling
 2. Complete the backfilling:
 - a. The ponded area of the NGP will be backfilled to a grade elevation of approximately 1,267 feet above mean sea level (backfill depth varies from 0-8 feet) to create a working platform for drilling activities. The Subcontractor may elect to subcontract the backfilling operation to a local entity. The estimated quantity of backfill required is approximately 5,000-7,000 cubic yards (CY), trucked quantity.
 3. Demobilization after completing Backfilling

3.3 GENERAL INFORMATION

3.3.1 PROJECT SCHEDULE AND NOTIFICATION

- A. The Subcontractor shall commence work within five working days of the issuance of a written Notice to Proceed by the Contractor's Subcontracts Manager.
- B. The Subcontractor shall notify in writing, within 24 hours, the Contractor's Subcontracts Manager and Site Manager of any anticipated delays in the agreed upon schedule or changes in equipment or personnel.
- C. The Subcontractor shall not perform any work without first notifying the Contractor's onsite coordinator.
- D. The Subcontractor's foreman shall review the work progress with the Contractor's onsite coordinator daily.
- E. The anticipated daily start time is 7:00 a.m. The work day shall consist of 10 hours of work on-site excluding time spent at lunch. The daily schedule may be altered by the Contractor. All overtime is the responsibility of the Subcontractor.
- F. The Subcontractor must obtain prior written authorization from the Contractor's Contracting Officer for all additional level of effort beyond those stated in this solicitation. Additional level(s) of effort may require, as well, prior USACE Contracting Officer's written consent. Should the Subcontractor fail to obtain prior written authorization from the Contractor's Contracting Officer in the performance of any additional level of effort beyond what is stated in this solicitation, such effort performed shall be totally at the Subcontractor's risk.

3.3.2 QUALIFICATIONS

- A. The Subcontractor shall have all applicable State of New York, Oneida County, and local licenses and shall employ only qualified personnel for the execution of this work.
- B. The Subcontractor shall certify at least 5 days before commencing field activities that all Subcontractor personnel shall be competent workers and have up-to-date health and safety training in accordance with 29 CFR 1910 and 1926. The Subcontractor shall also certify that personnel working at the site, including any lower-tiered Subcontractors utilized, are included in a medical monitoring program as required by OSHA safety and health standards. Further, if lower-tiered Subcontractors are utilized, they must comply with all the requirements in this SOW.
- C. The Subcontractor shall be capable of using the backfilling methods called for in this scope of work. The Subcontractor must maintain complete and current logs and daily notes to be submitted to the Contractor.
- D. The Subcontractor shall be capable of providing the types and quantities of equipment and materials necessary to complete the anticipated work as defined in this SOW.
- E. The Contractor reserves the right to have the Subcontractor remove and replace Subcontractor and/or lower-tier Subcontractor personnel deemed in view of the Contractor to be unqualified for this particular project. Such removal and replacement of personnel shall be totally at the Subcontractor's expense.

3.3.3 STANDARDS AND REGULATIONS

- A. The Subcontractor shall be familiar and comply with the rules and regulations that apply to work performed under this agreement. When no reference is made to a code, standard, or specification, the standard specifications of the ASTM, the ASTI, the ASME, the IEEE, or the NEMA shall govern.
- B. The latest revisions of applicable AWWA, ASTM, and API standards shall apply.

3.3.4 SUBCONTRACTOR'S EQUIPMENT AND MATERIALS

- A. All equipment, materials and methods to be used by the Subcontractor shall be subject to approval by the Contractor before the work is started. However, approval of the equipment, materials and methods shall not be construed as including approval of the performance thereof. Additional equipment and methods shall be provided where ordered by the Contractor if required to perform the work satisfactorily according to the specifications.

3.3.5 RECORDS

- A. A detailed Daily Backfilling Report shall be maintained by the Subcontractor and be submitted as requested by the Contractor. The report shall give a complete description of all material used, cubic yards placed, number of hours on the job, downtime, delay time and reason for the delay, and other pertinent data requested by the Contractor.
- B. The Subcontractor shall furnish the Contractor or authorized representative with every reasonable facility and assistance for maintaining records and ascertaining whether or not the work as performed is in accordance with the requirements and intent of this Statement of Work/Specifications. The Contractor reserves the right to indicate in what sequence the work shall be undertaken, suspended or completed.

3.3.6 SUBMITTALS

- A. The Subcontractor shall supply training records, medical certificates, and fit test certification for each Subcontractor employee assigned to work at the site. The Subcontractor shall provide documentation of current medical physicals for all equipment operation, and support personnel at

the site. Additional documentation indicating Subcontractor and any lower-tiered Subcontractor personnel have completed (and updated) the OSHA 29 CFR 1910.120 40-hour Hazardous Waste Operations and Emergency Response course and fit test certificates shall be required. Documentation shall be provided at least five days before field work begins.

3.3.7 QUALITY ASSURANCE/QUALITY CONTROL

- A. The Subcontractor shall implement a quality assurance/quality control (QA/QC) program to achieve the objectives of this SOW. At a minimum, the Subcontractor shall:
 - 1. Permit on-site audits/inspections of all work completed under this Subcontract by the Contractor or an authorized designate, for adherence to QA/QC requirements.
 - 2. The Subcontractor shall maintain detailed Backfilling Reports and shall submit them to the Contractor at the end of each workday (see Section 3.3.6).
 - 3. Notify the Contractor of issues that may affect quality or performance of work.
 - 4. Subject all submittals to a thorough quality control review prior to submittal to the Contractor.
 - 5. Provide a description of all equipment to be used at the site as part of the proposal.
- B. The Subcontractor shall also comply with the following:
 - 1. Submit to the site a representative sample of proposed backfill, weighing approximately 50 pounds, at least 5 days prior to the date of anticipated use of such material. This representative sample shall be tested and certified in accordance with the soils testing laboratory details below.
 - 2. Engage a soils testing laboratory to perform:
 - a. Sample grain size analyses and a soil classification test (ASTM D 421, ASTM D 422, and ASTM D 1140, and ASTM D 2487) to determine their suitability for use as backfill or in conformance to the materials requirements specified in Section 3.4.2.

3.3.8 ENFORCEABILITY

- A. If the Subcontractor does not fulfill these requirements, the Subcontract may be suspended and/or terminated in accordance with the applicable default termination, the Subcontractor shall not be deemed eligible for standby time or other compensation for down time during such periods. Failure to comply with these requirements, when failure impacts the performance schedule of the prime contract, may subject the Subcontractor to claims for incidental or consequential damages.
- B. Any disregard for the provisions of the health and safety requirements in this/these Subcontract shall be deemed just and sufficient cause for termination of this/these Subcontract. The Subcontractor must abide by the health and safety requirements outlined in the Contractor-approved Site Health and Safety Plan (HASP).

3.3.9 PROJECT SUPPORT AREA AND SECURITY

- A. The Subcontractor shall provide a portable toilet and regular trash dumpster. This area is not fenced off and is not secure. The Subcontractor shall be responsible for power and potable water to meet the needs of the project.
- B. The Subcontractor shall be responsible for securing their stockpiled materials and equipment. The Contractor shall not be responsible for any of the Subcontractor's material or equipment vandalized, stolen or otherwise rendered unsuitable for use on this project.

3.3.10 SITE ACCESS

- A. EPA, prior to commencement of the work, shall arrange access to the site and surrounding areas. The Subcontractor shall notify the Contractor a minimum of five working days prior to the date that is required.

3.4 EXECUTION

3.4.1 MOBILIZATION/DEMOBILIZATION

- A. Mobilization/demobilization shall include the following:
1. Transportation of equipment and personnel to and from the site
 2. Construction equipment such as a backhoe
 3. Any clearance of tree limbs or brush necessary to build the access ramp for NGP backfilling
 4. Site clean-up
 9. All other costs not specifically included in other bid items.
- B. Demobilization shall include removal of all Subcontractor equipment, supplies, and material from the site.
- C. All material or equipment furnished under this item shall remain the property of the Subcontractor and shall be maintained, cared for and disposed of by the Subcontractor.
- D. This item shall also include all charges incidental to the Subcontractor's cost for safety training. This item shall also include all other costs incidental to this item.

3.4.2 NGP BACKFILLING

- A. The ponded area of the NGP shall be backfilled to a grade elevation of approximately 1267 feet above mean sea level (backfill depth varies from 0-8 feet) to create a working platform for drilling activities. The estimated quantity of backfill required is 5,000-7,000 CY (trucked quantity). This task can be subcontracted out by the Subcontractor.
- B. The Subcontractor shall be required to clear and grade a small portion of the area near the existing gate in the NGP (see Figure 3-1) in order to construct an access road/ramp to backfill the NGP. This may require removing part of the existing fence.
- C. Materials:
1. A suggested gradation for the backfill is provided below to provide support for the DPT drill rig; the approximate weight of an example track-mounted DPT model is 5,000 pounds and has a 2 inch coring tube. Backfill shall be gravely sand and it shall be free of organic material, loam, wood, snow, ice, frozen soil, man-made materials and other objectionable material. The Subcontractor may provide an alternative material for use as backfill to the Contractor. Backfill material shall be approved by the Contractor prior to the commencement of backfilling operations. It shall be the responsibility of the Subcontractor to ensure that a stable working platform is constructed for the designated purpose. The suggested gradation is as follows:

Sieve Size	Percent Passing
2-inch	100
No. 4	20 - 70
No. 40	5 - 40
No. 200	0 - 20

2. The DPT drill rig must be able to penetrate through the backfill material.
3. At least 5 days prior to the date of anticipated use of such material, the Subcontractor shall

submit to the site a representative sample of proposed fill, weighing approximately 50 pounds.

- D. Backfill shall be brought up in substantially level lifts throughout the NGP, starting in the nearest end of the pond, and systematically pushing the material outward. The entire surface of the work shall be maintained free from ruts and in such condition that construction equipment can readily travel over any section once entirely filled.
- E. Compaction:
 - 1. Compaction of backfill in open areas shall consist of fully loaded ten-wheel trucks, a tractor dozer weighing at least 10 tons and operated at full speed, a heavy vibratory roller, or any method approved by the Contractor. Compaction of backfill in confined areas shall be accomplished by hand operated vibratory equipment or mechanical tampers approved by the Contractor.
 - 2. The backfill material shall be compacted by a minimum of three passes of approved compaction equipment at the end of the backfill operations. The choice of specific compaction equipment shall be the responsibility of the Subcontractor subject to the approval of the Contractor.

3.4.3 SITE RESTORATION

- A. The Subcontractor shall be responsible for preserving, protecting and preventing damage to all private property.

3.5 MATERIALS/PRODUCTS

3.5.1 INTRODUCTION

- A. The Subcontractor shall supply the necessary equipment, materials and experienced labor to complete the work as described in this specification.
- B. The equipment and materials outlined in Sections 3.5.2 through 3.5.5 below shall be stockpiled in the staging area on-site for use as necessary. All items shall be brought to the site clean and in good condition and kept clean and in satisfactory condition throughout the duration of the contract. The Subcontractor shall be responsible for the security of all stockpiled materials and equipment. The Contractor shall not be responsible for any of the Subcontractor's material or equipment vandalized, stolen or otherwise rendered unsuitable for use on this project.

3.5.2 BACKFILLING EQUIPMENT

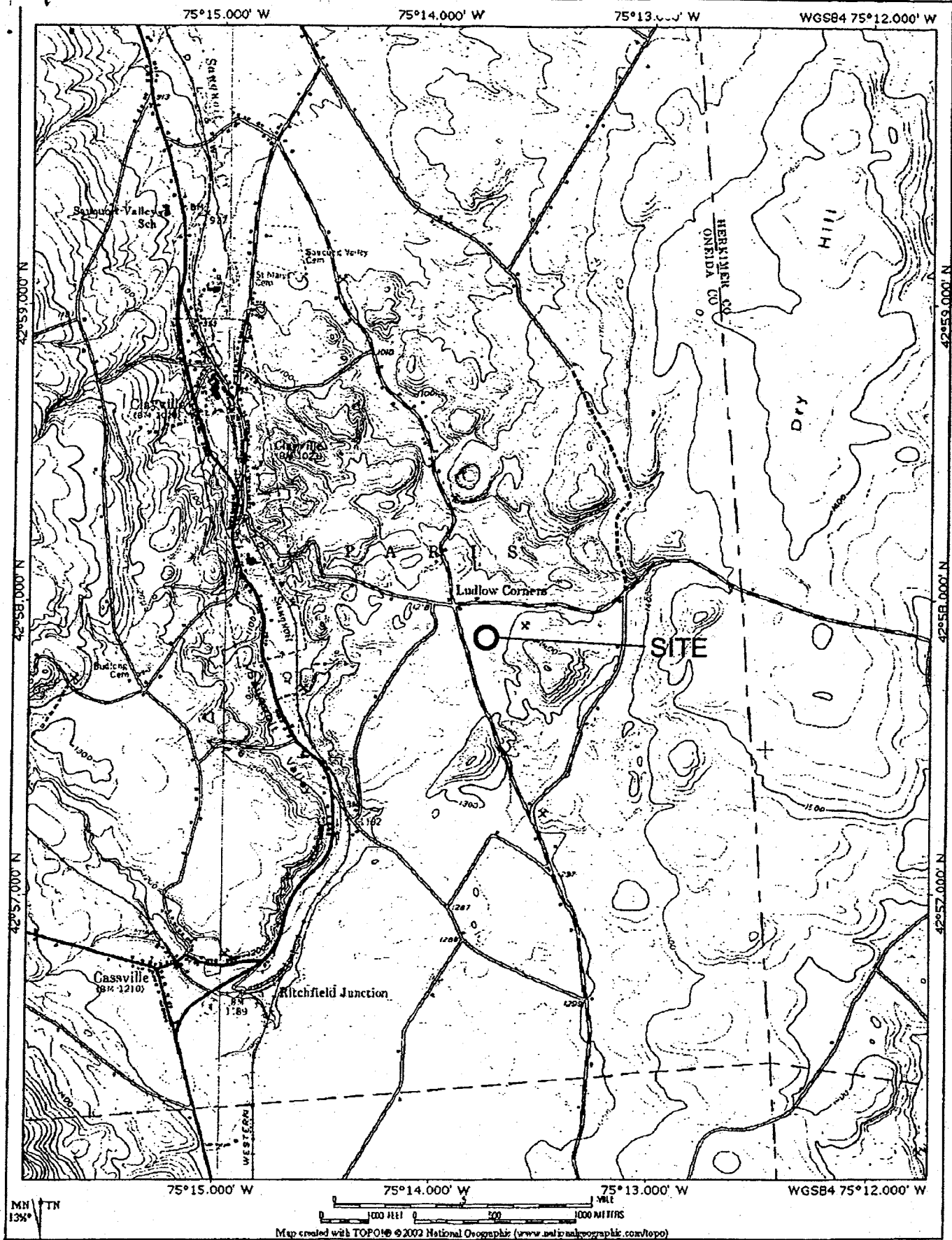
- A. One front-end loader and compaction equipment to backfill the NGP in accordance with this scope of work.
- B. Other equipment, as needed, to clear and grade the access road/ramp.
- C. This list is intended to indicate the type of equipment and capabilities required and is not intended to be an exhaustive list. The Subcontractor must provide all equipment, tools, and supplies to complete the scope of work.

3.5.3 SAFETY EQUIPMENT

- A. The Subcontractor shall provide for his employees all clothing and equipment necessary to comply with the health and safety requirements specified in the Site HASP. All necessary equipment shall be readily available to the Subcontractor's employees at the site and shall be in conformance with the Site HASP. All safety equipment shall meet the requirements of NIOSH/OSHA.

3.6 MEASUREMENT AND PAYMENT

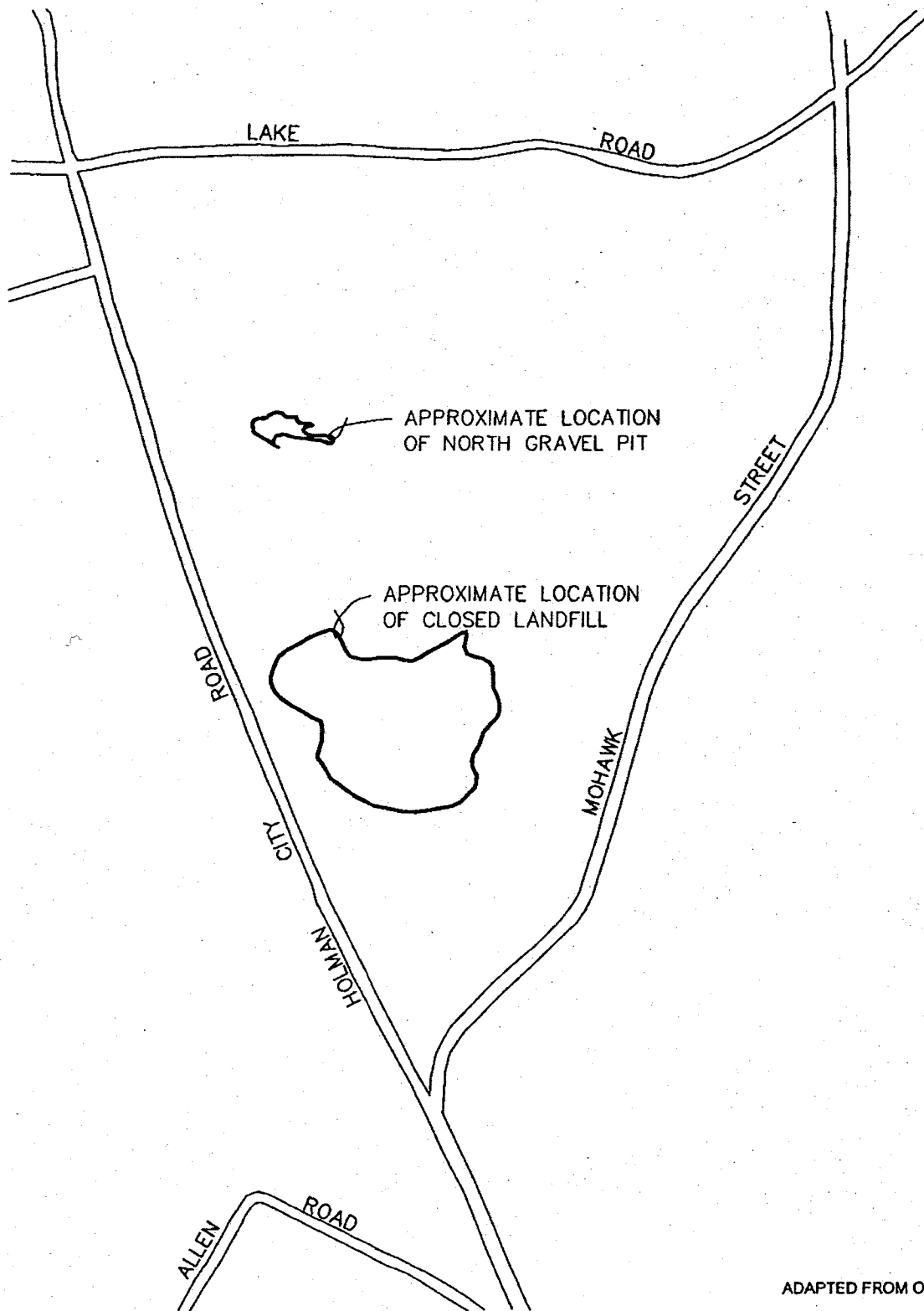
- A.** The Contractor shall compensate the Subcontractor for professional services rendered in accordance with this Agreement at the prices established in the Price Sheet for the respective items.
- B.** At the completion and acceptance of each task, the Contractor shall recommend payment upon receipt of the Subcontractor's invoice.
- C.** For backfill payloads, the Subcontractor must present receipts to the onsite Contractor representative upon entering in order to receive payment. Additionally, the Contractor reserves the right to inspect the said truckload prior to entry.



CDM

Ludlow Sand And Gravel Site
North Gravel Pit
Oneida County, New York

FIGURE 1-1
Site Location Map



N
NOT TO SCALE

ADAPTED FROM OBG RI/FS, 1999

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Ludlow Sand And Gravel Site/
North Gravel Pit
Oneida County, New York

FIGURE 1-2
Ludlow Landfill Site Map

